



## RFP No: 3736

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INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until October 22, 2013 @ **3:00 p.m.** Central Time for the acquisition of the products/services described below for the Mississippi Department of Information Technology Services.

Proposals for the selection of one or more Vendors to fulfill the requirements of an authorized Microsoft reseller for Microsoft Volume Licensing Programs for Government and/or a Large Account Reseller (LAR) for Education for the State of Mississippi.

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**The Vendor must submit proposals and direct inquiries to:**

Kay-Lynn Meador  
Technology Consultant  
Information Technology Services  
3771 Eastwood Drive  
Jackson, MS 39211  
(601) 432-8001  
KayLynn.Meador@its.ms.gov

To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

PROPOSAL, SUBMITTED IN RESPONSE TO  
RFP NO. 3736  
due October 22, 2013 @ 3:00 p.m., CST  
ATTENTION: Kay-Lynn Meador

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**Craig P. Orgeron, Ph.D.**  
**Executive Director, ITS**

## ITS RFP Response Checklist

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RFP Response Checklist: These items should be included in your response to RFP No. 3736.

- \_\_\_\_\_ 1) One clearly marked original response and three (3) identical copy/copies of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and RFP number. Include the items listed below inside the binder. Please DO NOT include a copy of the RFP in the binder.
- \_\_\_\_\_ 2) *Submission Cover Sheet*, signed and dated. (Section I)
- \_\_\_\_\_ 3) *Proposal Bond*, if applicable (Section I)
- \_\_\_\_\_ 4) *Proposal Exception Summary*, if applicable (Section V)
- \_\_\_\_\_ 5) Vendor response to *RFP Questionnaire* (Section VI)
- \_\_\_\_\_ 6) Vendor response to *EPL Overview* (Section VII)
- \_\_\_\_\_ 7) Point-by-point response to *Technical Specifications* (Section VIII)
- \_\_\_\_\_ 8) Vendor response to *Cost Information Submission* (Section IX)
  - hard copy of each of the three (3) spreadsheets
  - electronic copy of the Product Pricing Spreadsheet
- \_\_\_\_\_ 9) *References* (Section X)
- \_\_\_\_\_ 10) Vendor response to *Sales Reporting*, if applicable (Section XI)
  - Incumbent Vendors awarded under current Microsoft EPL 3640 must submit their 2013 sales report with the proposal response to RFP 3736.
- \_\_\_\_\_ 11) Vendor has paid the proposal submission fee per the directions in *Technical Specifications* (Section VIII)

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**SECTION I  
SUBMISSION COVER SHEET & CONFIGURATION SUMMARY**

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Information Technology Services, (ITS), should contact for questions and/or clarifications.

Name \_\_\_\_\_ Phone # \_\_\_\_\_  
Address \_\_\_\_\_ Fax # \_\_\_\_\_  
\_\_\_\_\_ E-mail \_\_\_\_\_

Subject to acceptance by ITS, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Standard Contract in Appendix A – Non-ARRA version or Appendix B – ARRA version if included herein, except those listed as exceptions on the Proposal Exception Summary Form. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

\_\_\_\_\_/\_\_\_\_\_  
**Original signature** of Officer in Bind of Company/Date

Name (typed or printed) \_\_\_\_\_  
Title \_\_\_\_\_  
Company name \_\_\_\_\_  
Physical address \_\_\_\_\_  
State of Incorporation \_\_\_\_\_

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**CONFIGURATION SUMMARY**

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

## **PROPOSAL BONDS**

A Proposal Bond is not required for this procurement.

## SECTION II PROPOSAL SUBMISSION REQUIREMENTS

The objective of the Proposal Submission Requirements section is to provide Vendors with the information required to submit a response to this Request for Proposal (RFP). A Vendor who has responded to previous RFPs issued by **ITS** should not assume that the requirements are the same, as changes may have been made.

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the office of **ITS** by the date and time specified. **ITS** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor's original submission must be clearly identified as the original. The Vendor's original proposal must include the Proposal Bond, (if explicitly required in Section IV).
6. **ITS** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. **ITS** reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **ITS** is the official version and will supersede any conflicting RFP language submitted by the Vendor.
9. The Vendor must conform to the following standards in the preparation of the Vendor's proposal:
  - 9.1 The Vendor is required to submit one clearly marked original response and three (3) identical copy/copies of the complete proposal, including all sections and appendices, in three-ring binders.
  - 9.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the

- RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
- 9.3 Number each page of the proposal.
  - 9.4 Respond to the sections and appendices in the same order as this RFP.
  - 9.5 Label and tab the responses to each section and appendix, using the corresponding headings from the RFP.
  - 9.6 If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
  - 9.7 Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with "NOT APPLICABLE."
  - 9.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
  - 9.9 When an outline point/attachment is a statement provided for the Vendor's information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
  - 9.10 Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
  - 9.11 The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
10. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor's cost proposal may be grounds for rejection of the Vendor's proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.
  11. **ITS** reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation or failure to

provide the information in the manner required may, at the State's discretion, result in the disqualification of the Vendor's proposal.

12. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
13. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
  - 13.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
  - 13.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
  - 13.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
  - 13.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
  - 13.5 The Vendor must submit a statement outlining the circumstances for the clarification.
  - 13.6 The Vendor must submit one clearly marked original and three (3) copies of the clarification.
  - 13.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
14. **Communications with State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this RFP must be submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this RFP, and they will be posted to the **ITS** web site. Vendors failing to comply with this requirement will be subject to disqualification.

  - 14.1 The State's contact person for the selection process is: Kay-Lynn Meador, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8001, KayLynn.Meador@its.ms.gov.

- 14.2 Vendor may consult with State representatives as designated by the State's contact person identified in 14.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

### SECTION III VENDOR INFORMATION

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to respond to the RFP successfully.

1. **Interchangeable Designations**

The terms "Vendor" and "Contractor" are referenced throughout this RFP. Generally, references to the "Vendor" are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term "Contractor" denotes the role assumed, post-award, by the winning Vendor. Additionally, the terms "State of Mississippi," "State" or "ITS" may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications. References to a specific agency, institution or other political entity represent the client or customer on whose behalf ITS is issuing the RFP.

2. **Vendor's Responsibility to Examine RFP**

Vendors must examine all documents, forms, specifications, standard provisions, and instructions.

3. **Proposal as Property of State**

All written proposal material becomes the property of the State of Mississippi.

4. **Written Amendment to RFP**

Any interpretation of an ITS RFP will be made by written amendment only. The State will not be responsible for any other explanation of this RFP. A copy of any amendment will be posted on the ITS website, together with the associated RFP specification. Vendors are required to check the ITS website periodically for RFP amendments before the proposal opening date at:

[http://www.its.ms.gov/Procurement/Pages/RFPS\\_Awaiting.aspx](http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx)

Any and all amendments will be posted no later than noon, seven days prior to the proposal opening date listed on the cover page of this RFP. If you are unable to access the ITS website, you may contact the ITS technology consultant listed on page one of this RFP and request a copy.

5. **Oral Communications Not Binding**

Only transactions which are in writing from ITS may be considered official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

6. **Vendor's Responsibility for Delivery**

Vendors must ensure, through reasonable and sufficient follow-up, proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this RFP. The State will not be responsible for the failure of any delivery medium for submission of information to or from the Vendor, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.

7. **Evaluation Criteria**

The State's intent in issuing this RFP is to award a contract to the lowest and best responsive Vendor who meets specifications, considering price and other factors. The Vendor's past performance, cooperation, and ability to provide service and training are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in *Technical Specifications*.

8. **Multiple Awards**

**ITS** reserves the right to make multiple awards.

9. **Right to Award in Whole or Part**

**ITS** reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

10. **Right to Use Proposals in Future Projects**

The State reserves the right to evaluate the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor's proposal for future projects is solely at the discretion of the State and requires the agreement of the proposing Vendor. The State's decision to reuse an awarded proposal will be based upon such criteria as: (1) the customer's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the initial award.

11. **Price Changes During Award or Renewal Period**

A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.

12. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Vendors document their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor's cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

13. **Vendor Personnel**

For RFPs including professional services specifications, the Vendor will be required to provide and/or certify the following for each individual included in the Vendor's proposal:

- 13.1 A direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.

- 13.2 That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
- 13.3 That the individual is proficient in spoken and written English;
- 13.4 That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all USCIS regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
- 13.5 That the personnel assigned to a project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State. This requirement includes the responsibility for ensuring all non-citizens maintain current USCIS eligibility throughout the duration of the contract.

14. **Vendor Imposed Constraints**

The Vendor must specifically document what limitations, if any, exist in working with any other Contractor acting in the capacity of the State's business partner, subcontractor or agent who may be managing any present or future projects; performing quality assurance; integrating the Vendor's software; and/or providing web-hosting, hardware, networking or other processing services on the State's behalf. The project relationship may be based on roles as either equal peers; supervisory – subordinate; or subordinate – supervisory, as determined by the State. The State recognizes that the Vendor may have trade secrets, intellectual property and/or business relationships that may be subject to its corporate policies or agreements. The State must understand these issues in order to decide to what degree they may impact the State's ability to conduct business for this project. These considerations will be incorporated accordingly into the proposal evaluation and selection process. The understanding reached between the Vendor and the State with regard to this business relationship precludes the Vendor from imposing any subsequent limitations of this type in future project undertakings by the State.

15. **Best and Final Offer**

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for

attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

16. **Restriction on Advertising**

The Vendor must receive written approval from the State before advertising or referencing the award of the contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

17. **Rights Reserved to Use Existing Product Contracts**

The State reserves the right on turnkey projects to secure certain products from other existing **ITS** contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

18. **Additional Information to be Included**

In addition to answering each specification within this RFP, the Vendor must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

19. **Valid Contract Required to Begin Work**

The successful Vendor should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendor prior to the execution of the contract is done at the Vendor's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

## SECTION IV LEGAL AND CONTRACTUAL INFORMATION

The objective of the *Legal and Contractual Information* section is to provide Vendors with information required to complete a contract or agreement with **ITS** successfully.

1. **Acknowledgment Precludes Later Exception**

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contract* in Appendix A – Non-ARRA version or Appendix B – ARRA version if included herein, except those specifically listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

2. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and appendices of this RFP, including the *Standard Contract* attached as Appendix A – Non-ARRA version or Appendix B – ARRA version, if applicable, shall contractually obligate the Vendor to comply with that item.

3. **Contract Documents**

**ITS** will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between **ITS** and the Vendor:

- 3.1 The Proposal Exception Summary Form as accepted by **ITS**;
- 3.2 Contracts which have been signed by the Vendor and **ITS**;
- 3.3 **ITS'** Request for Proposal, including all addenda;
- 3.4 Official written correspondence from **ITS** to the Vendor;
- 3.5 Official written correspondence from the Vendor to **ITS** when clarifying the Vendor's proposal; and
- 3.6 The Vendor's proposal response to the **ITS** RFP.

4. **Order of Precedence**

When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **ITS** and the winning Vendor.

5. **Additional Contract Provisions**

The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

6. **Contracting Agent by Law**

The Executive Director of **ITS** is, by law, the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer and telecommunications equipment, systems, software, and services (Section 25-53-1, et seq., of the Mississippi Code Annotated). **ITS** is issuing this RFP on behalf of the procuring agency or institution. **ITS** and the procuring agency or institution are sometimes collectively referred to within this RFP as "State."

7. **Mandatory Legal Provisions**

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 The Vendor shall have no limitation on liability for claims related to the following items:
- 7.3.1 Infringement issues;
  - 7.3.2 Bodily injury;
  - 7.3.3 Death;
  - 7.3.4 Physical damage to tangible personal and/or real property; and/or
  - 7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.

- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.

8. **Approved Contract**

- 8.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:
  - 8.1.1 Written notification made to proposers on **ITS** letterhead, or
  - 8.1.2 Notification posted to the **ITS** website for the project, or
  - 8.1.3 CP-1 authorization executed for the project, or
  - 8.1.4 The **ITS** Board's approval of same during an open session of the Board.
- 8.2 **ITS** statute specifies whether **ITS** Director approval or **ITS** Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 8.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the **ITS** Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the **ITS** Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

9. **Contract Validity**

All contracts are valid only if signed by the Executive Director of **ITS**.

10. **Order of Contract Execution**

Vendors will be required to sign contracts and to initial all contract changes before the Executive Director of **ITS** signs.

11. **Availability of Funds**

All contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the winning Vendor of a purchase order from the acquiring State entity.

12. **CP-1 Requirement**

All purchase orders issued for goods and services acquired from the awarded Vendor under this RFP must be encoded by the Customer agency with a CP-1 approval number assigned by **ITS**. This requirement does not apply to acquisitions that by policy have been delegated to State entities.

13. **Requirement for Electronic Payment and Invoicing**

13.1 Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Statewide Automated Accounting System (“SAAS”) will be made electronically, via deposit to the bank account of the Vendor’s choice. The awarded Vendor must enroll and be activated in PayMode™, the State’s current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Vendor to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://portal.paymode.com/ms/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting [mash@dfa.state.ms.us](mailto:mash@dfa.state.ms.us).

13.2 For state agencies that make payments through SAAS, the awarded Vendor is required to submit electronically all invoices for goods and services acquired under this RFP, along with appropriate supporting documentation, as directed by the State. Should the requirement for electronic invoicing be implemented during the term of the project contract, the State will work with the Vendor to determine a reasonable timeframe for initiating electronic invoicing.

13.3 Items 13.1 and 13.2 only apply to state agencies that make payments through SAAS. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.

14. **Time For Negotiations**

14.1 All contractual issues must be successfully negotiated within fifteen (15) working days from the Vendor’s initial receipt of the project contract from **ITS**, unless **ITS** consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor’s response to this RFP. **ITS** may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.

14.2 Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new

items that the State may require. All contract changes requested by the Vendor related to such exceptions noted in Vendor's proposal shall be submitted three (3) working days prior to scheduled negotiations, unless **ITS** consents to a different period.

15. **Prime Contractor**

The selected Vendor will be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal and for the fulfillment of the contract with the State.

16. **Sole Point of Contact**

**ITS** will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

16.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Vendor represents all contractors, third parties and/or subcontractors the Vendor has assembled for this project. The Vendor's commitments are binding on all such parties and consequently the State is only required to negotiate with the Vendor.

16.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.

16.3 Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.

17. **ITS Approval of Subcontractor Required**

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request

replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.

18. **Inclusion of Subcontract Agreements**  
Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.
19. **Negotiations with Subcontractor**  
In order to protect the State's interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.
20. **References to Vendor to Include Subcontractor**  
All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.
21. **Outstanding Vendor Obligations**
  - 21.1 Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which **ITS** is the contracting agent and who has received written notification from **ITS** regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, **ITS** has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.
  - 21.2 Any Vendor who is presently in default on existing contracts for which **ITS** is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
  - 21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.
22. **Equipment Condition**  
For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.

23. **Delivery Intervals**  
The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.
24. **Pricing Guarantee**  
The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.
25. **Shipping Charges**  
For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.
26. **Amortization Schedule**  
For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.
27. **Americans with Disabilities Act Compliance for Web Development and Portal Related Services**  
All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.
28. **Ownership of Developed Software**
  - 28.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.
  - 28.2 The State may be willing to grant the Vendor a nonexclusive license to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.
29. **Ownership of Custom Tailored Software**  
In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.
30. **Terms of Software License**  
The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor's proposal.

31. **The State is Licensee of Record**

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

32. **Compliance with Enterprise Security Policy**

Any solution proposed in response to this RFP must be in compliance with the State of Mississippi's Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and covers the following topics: web servers, email, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Vendor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

The Enterprise Security Policy is available to third parties on a need-to-know basis. The Vendor may request individual sections of the Enterprise Security Policy or request the entire document. Vendor must provide contact information (name, email address, phone number) to the State's contact person identified in Section II, Item 14.1 who will coordinate the secure delivery of the requested information.

33. **Negotiating with Next-Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

34. **Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of proposal information will be made in compliance with the **ITS** Public Records Procedures established in accordance with the Mississippi Public Records Act. The **ITS** Public Records Procedures are available in Section 019-010 of the **ITS** Procurement Handbook, on the **ITS** Internet site at:

<http://dsitspe01.its.ms.gov/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/bb780b5a8360c3138625765d004e4aff?OpenDocument> or from **ITS** upon request.

As outlined in the Third Party Information section of the **ITS** Public Records Procedures, **ITS** will give written notice to any affected Vendor of a request to view or reproduce the Vendor's proposal or portion thereof. **ITS** will not, however, give such notice with respect to summary information prepared in connection with the State's review or evaluation of a Vendor's proposal, including, but not limited to, written presentations to the **ITS** Board or other approving bodies, and/or similar written documentation prepared for the project file. In addition, **ITS** will not provide third-party notice for requests for any contract executed as a result of this RFP, with the exception of information contained in

contract exhibits identified and labeled as confidential during the contract negotiation process. **ITS** will provide third-party notice of requests for any such confidential exhibits to allow Vendor the opportunity to protect the information by court order as outlined in the **ITS** Public Records Procedures.

Summary information and contract terms, as defined above, become the property of **ITS**, who has the right to reproduce or distribute this information without notification.

Vendors should further be aware that requests for disclosure of proposal and contract information are sometimes received by **ITS** significantly after the proposal opening date. **ITS** will notify the signatory "Officer in Bind of Company" provided in Section I of this RFP for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the "Officer in Bind of Company" should not be used for notification of public records requests, Vendor should provide the alternative contact information in response to this RFP item.

35. **Risk Factors to be Assessed**

The State will assess risk factors that may initially exist within a given procurement and that may develop over the course of a procurement process as facts become known. The State, at its sole discretion, may employ the following mechanisms in mitigating these risks: proposal bonding, performance bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. The Vendor must agree to incorporate any or all of the above terms and conditions into the customer agreement.

36. **Proposal Bond**

The Vendor is not required to include a proposal bond with its RFP proposal.

37. **Performance Bond/Irrevocable Bank Letter of Credit**

The Vendor is not required to include the price of a performance bond or irrevocable bank letter of credit with its RFP proposal.

38. **Responsibility for Behavior of Vendor Employees/Subcontractors**

The Vendor will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor acting in a manner determined by the administration of any State agency or institution to be detrimental, abusive, or offensive to any of the staff or student body of any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

39. **Protests**

The Executive Director of **ITS** and/or the Board Members of **ITS** or their designees shall have the authority to resolve Vendor protests in connection with the selection for award of a contract. Copies of the protest procedures are available on the **ITS** Internet site - **ITS** Protest Procedure and Policy, Section 019-020, **ITS** Procurement Handbook at:

<http://dsitspe01.its.ms.gov/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/f227957c9c49a38a8625767900790c4e?OpenDocument> or from **ITS** upon request.

40. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the **ITS** Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify RFP number 3736.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the full amount of the total estimated project lifecycle cost or \$250,000.00, whichever is less. The total estimated project lifecycle cost will be the amount used by **ITS** in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor's expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, **ITS** reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Vendor fail to comply with the content requirements of **ITS'** protest procedure and policy, fail to be submitted within the prescribed time limits, or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the **ITS** Executive Director.

41. **Mississippi Employment Protection Act**

Effective July 1, 2008, Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Vendor will agree to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State.

Vendor acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the

State of Mississippi.

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

## SECTION V PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state “No Exceptions Taken.” If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted with “shall” or “must,” as long as the following are true:
  - 1.1 The specification is not a matter of State law;
  - 1.2 The proposal still meets the intent of the RFP;
  - 1.3 A *Proposal Exception Summary Form* is included with Vendor’s proposal; and
  - 1.4 The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the *Proposal Exception Summary Form*.
2. The Vendor has no liability to provide items to which an exception has been taken. **ITS** has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and **ITS** will discuss each exception and take one of the following actions:
  - 2.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
  - 2.2 **ITS** will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception;
  - 2.3 **ITS** and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or
  - 2.4 None of the above actions is possible, and **ITS** either disqualifies the Vendor’s proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **ITS** and the Vendor reach a successful agreement, **ITS** will sign adjacent to each exception which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor’s exceptions. The *Proposal Exception Summary*, with those exceptions approved by **ITS**, will become a part of any contract on acquisitions made under this RFP.
4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the

standard terms and conditions of the State's RFP, including the *Standard Contract* in Appendix A – Non-ARRA version or Appendix B – ARRA version, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.

6. For Vendors who have successfully negotiated a contract with **ITS** in the past, **ITS** requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **ITS** or participated in contract negotiations with **ITS** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

### PROPOSAL EXCEPTION SUMMARY FORM

List and clearly explain any exceptions, for all RFP Sections and Appendices, in the table below.

ITS RFP Reference	Vendor Proposal Reference	Brief Explanation of Exception	ITS Acceptance (sign here only if accepted)
(Reference specific outline point to which exception is taken)	(Page, section, items in Vendor's proposal where exception is explained)	(Short description of exception being made)	
1.			
2.			
3.			
4.			
5.			
6.			
7.			

**SECTION VI  
RFP QUESTIONNAIRE**

Please answer each question or provide the information as requested in this section.

**1. Statewide Automated Accounting System (SAAS) Information for State of Mississippi Vendor File**

1.1 **SAAS Vendor Code:** Any Vendor who has not previously done business with the State and has not been assigned a SAAS Vendor code should furnish a signed copy of an IRS W-9 form with the proposal. A copy of the W-9 Form can be obtained at the following link on the **ITS** website:

<http://www.its.ms.gov/Procurement/Pages/Vendor.aspx>

Vendors who have previously done business with the State should furnish **ITS** with their SAAS Vendor code.

SAAS Vendor Code: \_\_\_\_\_ OR Signed W-9 Form Attached: \_\_\_\_\_

1.2 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at: [http://www.mississippi.org/assets/docs/minority/minority\\_vendor\\_selfcertform.pdf](http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf). Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at [minority@mississippi.org](mailto:minority@mississippi.org).

Minority Vendor Self-Certification Form Included: \_\_\_\_\_  
Minority Vendor Self-Certification Form Previously Submitted: \_\_\_\_\_  
Not claiming Minority/Women Business Enterprise Status: \_\_\_\_\_

**2. Certification of Authority to Sell**

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)

**3. Certification of No Conflict of Interest**

Mississippi law clearly forbids a direct or indirect conflict of interest of a company or its employees in selling to the State. The Vendor must answer and/or provide the following:

- 3.1 Does there exist any possible conflict of interest in the sale of items to any institution within **ITS** jurisdiction or to any governing authority? (A yes or no answer is required.)
- 3.2 If the possibility of a conflict does exist, provide a list of those institutions and the nature of the conflict on a separate page and include it in your proposal. The Vendor may be precluded from selling to those institutions where a conflict of interest may exist.

4. **Pending Legal Actions**

- 4.1 Are there any lawsuits or other legal proceedings against the Vendor that pertain to any of the software, hardware, or other materials and/or services which are a part of the Vendor's proposal? (A yes or no answer is required.)
- 4.2 If so, provide a copy of same and state with specificity the current status of the proceedings.

5. **Non-Disclosure of Social Security Numbers**

Does the Vendor acknowledge that any information system proposed, developed, or modified under this RFP that disseminates, in any form or manner, information or material that contains the Social Security Number of an individual, has mechanisms in place to prevent the inadvertent disclosure of the individual's Social Security Number to members of the general public or to persons other than those persons who, in the performance of their duties and responsibilities, have a lawful and legitimate need to know the individual's Social Security Number? This acknowledgement is required by Section 25-1-111 of the Mississippi Code Annotated.

6. **Order and Remit Address**

The Vendor must specify both an order and a remit address:

Order Address:

Remit Address (if different):

7. **Web Amendments**

As stated in Section III, **ITS** will use the **ITS** website to post amendments regarding RFPs before the proposal opening at:

[http://www.its.ms.gov/Procurement/Pages/RFPS\\_Awaiting.aspx](http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx)

**ITS** may post clarifications until noon seven days prior to the proposal opening date listed on the cover page of this RFP or the posted extension date, if applicable.

Vendors may list any questions or items needing clarification discovered in the week prior to the proposal opening in a written format at the beginning of the proposal binder or in the comment section for the individual offering.

Does the Vendor certify that they have reviewed a copy of the **ITS** amendments for RFPs as above stated? (A yes or no answer is required.)

## SECTION VII EPL OVERVIEW

### 1. Format of Proposal

Respond to the sections in the same order as the RFP, using the “RFP Response Checklist” at the front of this RFP as your guide.

### 2. Request for Proposal Overview

- 2.1 Responses to this RFP will be used to produce an EXPRESS PRODUCTS LIST (EPL) that provides ITS clients and staff with an economical, flexible mechanism to acquire Microsoft software products in full compliance with all purchasing requirements.
- 2.2 The EPL is available for review on the ITS Website at <http://www.its.ms.gov/procurement/pages/3736.aspx>
- 2.3 The EPL will have a specified dollar limit up to which clients may make purchases from the EPL without coming through **ITS** for approval.
- 2.4 **ITS** EPL clients include state agencies and institutions of higher learning which are under **ITS** purview and local government entities such as cities, counties, local school districts, and community colleges which are not under **ITS** purview.
- 2.4.1 All EPL clients may make routine purchases from the EPL up to the specified dollar limits under as defined in the **ITS** Procurement Handbook, Section 011-030 *Procurement Instruments: Express Products Lists (EPLs)*.
- 2.4.2 EPL clients may be authorized to make planned purchases from the EPL over the specified dollar limits in line with their current technology plan under the **Planned Purchases Procedure**, as defined in the **ITS** Procurement Handbook, Section 013-080.
- 2.4.3 All EPL clients may make purchases from the EPL over the specified dollar limits only with prior approval from **ITS**.
- 2.4.4 **ITS** clients are not required to use EPLs for their purchases.
- 2.5 This EPL will be used to make list(s) of quality products in defined categories available to state customers from reputable sources at the best possible prices.
- 2.6 Pricing is a major concern of **ITS**. Therefore Vendors must submit their pricing structure comparable to national pricing trends, the General Services Administration (GSA), other statewide contracts, or other prominent pricing benchmark in terms of volume discounts.

- 2.7 Submission of a proposal will not automatically qualify Vendor's products for placement on the Express Products List. **ITS** performs an evaluation of hardware/software offerings before placing the lowest and best offerings on the published EPL.
- 2.8 Each EPL is unique to **ITS**, administered under **ITS** policies and procedures, and not to be construed to apply or operate in any other manner by either Vendors or governmental entities.
- 2.9 It is the intent of **ITS** that an EPL is a multi-award list. However, **ITS** reserves the right to make a single award EPL.
- 2.10 By submitting a proposal for consideration and inclusion in the EPL, a Vendor is professing a willingness to provide customer service to ANY customer from the State of Mississippi qualified to use the EPL. As a condition for remaining on the EPL, Vendor must be willing to support our customers with timely telephone responses to their calls for information regarding the products and pricing proposed by your company, including but not limited to timely provision of "written quotes."
- 2.11 Any Vendor violating EPL policy may be removed for one or more EPL cycles and a bond may be required with Vendor's next proposal submittal.

3. **Right to Use Express Products List Proposals as General RFPs**

**ITS** uses EPL products in combination with General RFPs in many routine procurements. **ITS** reserves the right to use the Vendor's EPL response in the same capacity as a General RFP. A General RFP is an unpublished collection of Vendors' proposals for particular types of products or services used internally by **ITS** to solicit configurations and pricing through the Letter of Configuration (LOC) process on a project by project basis.

4. **Price Changes During Award or Renewal Period**

All pricing proposed should be your best proposal pricing. These costs are not-to-exceed costs. Vendor is required to pass any price decreases on to the customer. Vendor is also encouraged to provide quantity discounts to customers on EPL offerings should large quantities be purchased from the EPL.

5. **Restriction on Advertising**

The Vendor must receive written approval from the State before advertising or referencing the award of a contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi. The following guidelines pertain specifically to the use of Express Products Lists.

- 5.1 Acceptable guidelines for marketing EPL products include:

- 5.1.1 Vendor's reference of any EPL should include a description of the EPL, the EPL RFP number, and the valid dates for that EPL. EPLs go out of date and **ITS** maintains several types of EPLs.
  - 5.1.2 **ITS** recommends that you reference our website in any marketing publications or provide a link to our website from your website. <http://www.its.ms.gov>.
  - 5.1.3 Any description or interpretation of **ITS** EPL policy or reproduction of individual Vendor offerings should be an exact, current, and complete quotation with the source identified. Examples include the published EPL, the **ITS** procurement handbook, or the RFP number in question.
- 5.2 Unacceptable references of **ITS** EPLs include:
- 5.2.1 Do not imply that your EPL products are exclusive in any way or that you are the only EPL award. Government clients must still evaluate your EPL offerings with others on the list to determine "lowest and best" qualification.
  - 5.2.2 The EPL is **NOT** a "State Contract" as used by the Department of Finance and Administration (DFA) Office of Purchase and Travel. Because the procedures for using DFA "State Contracts" differ from using **ITS** EPLs, we ask that you not use this terminology.
  - 5.2.3 Do not mix marketing of EPL products with non-EPL products as this may imply that those non-EPL products are also on the EPL.

## 6. **Minimum Legal Requirements**

It is the intent of **ITS** that the Master Purchase Agreement, which is a requirement of some EPLs, and the Terms and Conditions of this RFP provide the contractual basis for purchases made from the EPL, and that additional contracts among **ITS**, the Vendor, or the EPL customer will not prove necessary. However, should an EPL customer require a custom contract at the time of sale to define a particular project, additional appropriate terms and conditions needed on a project may be negotiated between the Vendor and EPL Customer. Vendor must be willing to include any or all of the requirements detailed in Section IV to any contract if required by **ITS**.

## 7. **Master Purchase Agreement**

- 7.1 Due to the need for uniformity among EPL Vendors, a valid proposal for an EPL RFP must include a *Master Purchase Agreement* with **NO EXCEPTIONS**.
- 7.2 After the proposal opening, evaluation, and notice of award, **ITS** will send each awarded Vendor originals of the completed *Master Purchase Agreement* for the Vendor to sign and return. **ITS** will execute the contract and return a signed original to the Vendor.

- 7.3 The purchase order from any individual customer will serve as a supplement to this Agreement. Additional terms and conditions may be negotiated between the customer and Vendor at the time of sale, as needed.
- 7.4 American Recovery and Reinvestment Act (ARRA) of 2009
- 7.4.1 While ARRA requirements are still evolving and some current EPLs were established prior to the establishment of federal rules concerning the use of ARRA funds, to the best of our knowledge and current assessment, **ITS** believes the EPLs are valid purchase instrument for the use of ARRA funds.
- 7.4.2 **ITS** recommends that customers using these instruments for purchases using ARRA funds obtain written quotations from multiple EPL sellers, that the request for quotations state that ARRA funds will be used for the purchase, and that all quotations be maintained in the purchase file.
- 7.4.3 **ITS** recommends that the customers using this EPL for purchases using ARRA funds work with the Vendor to ensure that they have adequate contractual protection as recommended by the Mississippi Office of the State Auditor. To see recommended articles for consideration for inclusion in an ARRA contract, see “ARRA EPL Information for Stimulus Purchases” on the **ITS** website <http://www.its.ms.gov/EPL.shtml> or see the Department of Finance and Administration site, [http://www.mmrs.state.ms.us/statewide\\_applications/Stimulus/index.shtml](http://www.mmrs.state.ms.us/statewide_applications/Stimulus/index.shtml).
- 7.4.4 **ITS** has created two versions of the Master Purchase Agreement and sellers may elect to execute either contract. **ITS** recommends that sellers choose Appendix B, that includes the ARRA terms and conditions.
- 7.4.4.1 Appendix A – Master Purchase Agreement – Non-ARRA version.
- 7.4.4.2 Appendix B – Master Purchase Agreement – ARRA version. This purchase agreement is the same as Appendix A with the following additions:
- New sub-article 9.8
  - Exhibit A – Additional ARRA terms
- 7.4.5 Each seller’s record published on the **ITS** Microsoft EPL will have a field labeled “ARRA Participant” with either a “YES” or “NO” designation. The ARRA “YES” designation denotes that the seller has agreed to work with EPL customers to fulfill purchases that are funded by ARRA and that those sellers have signed the

Master Purchase Agreement with the additional ARRA terms and conditions. The “NO” designation indicates that the seller has not agreed to participate in ARRA funded projects and has NOT signed the **ITS** Master Purchase Agreement with ARRA terms.

8. **Substitutions**

Substitutions are not authorized under RFP No. 3736.

9. **Transition Between Cycles**

Vendor should recognize that the EPL procedure is cyclical. There may be interim periods between the expiration of an old EPL and the introduction of a new EPL or the issuance of corrections or updates to a working list. **ITS** must evaluate each cycle’s new proposals before the new list can go into effect. Also, acquisition approvals already in process using old proposals must have time to be completed and the purchase order process may overlap from an old EPL cycle into the new. Therefore, during these transition and overlapping periods, **ITS** will allow the customer to use the previous EPL to complete their purchase, and Vendors should strive to honor all products and pricing on either the old or new EPL list.

10. **Publication, Clarification, Corrections**

10.1 The Microsoft EPL will be available on the **ITS** website. This includes:

10.1.1 Instructions for Use,

10.1.2 Link to the EPL Website developed by the approved Vendor(s),  
and

10.1.3 List(s) of the approved Vendors, their contacts, purchase order  
information, remittance information, and their service fees.

## SECTION VIII TECHNICAL SPECIFICATIONS

### 1. How to Respond to this Section

- 1.1 Beginning with Item 2.1 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY” or “AGREED” to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State’s sole discretion, being subject to disqualification.
- 1.3 “ACKNOWLEDGED” should be used when no vendor response or vendor compliance is required. “ACKNOWLEDGED” simply means the vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency’s current operating environment is described or where general information is being given about the project.
- 1.4 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the vendor will adhere to the requirement. These terms are used to respond to statements that specify that a vendor or vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.5 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See Section V, for additional instructions regarding Vendor exceptions.)
- 1.6 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 1.7 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

### 2. General Overview and Background

- 2.1 The intent of this request for proposal (RFP) is the following:
  - 2.1.1 The selection of one or more resellers to fulfill the requirements of **an authorized Microsoft reseller** under the terms of the Microsoft Volume Licensing Agreements (VLA) for Government, which the State entered into with Microsoft.
  - 2.1.2 The selection of one or more resellers to fulfill the requirements of a **Large Account Reseller** (LAR) for Education.

- 2.2 **ITS** will consider choosing one reseller to handle both governmental and educational purchases for the Microsoft products requested in this RFP but will also consider two resellers or possibly more if it is in the State’s best interest to do so.
- 2.3 **ITS** prefers that the selected reseller(s) be certified for both government and academic Microsoft volume licensing. **ITS** will consider selecting a reseller that is only certified for either government or for education if it is in the State’s best interest. A Vendor only proposing for government or for education must provide justification and document the value adds that they provide over those qualifications of competitors that can provide both government and academic reseller services.
- 2.4 It is **ITS’** intent that Vendors responding to RFP No. 3736 be able to provide pricing and fulfill the role of authorized Microsoft reseller and/or Microsoft Authorized LAR under the terms of all Microsoft Licensing Programs, including Microsoft Select Plus Master Agreement for both government and education, Microsoft Enterprise Agreement, Microsoft Campus Agreement/Enrollment for Education Solutions (EES) Agreement, Microsoft School Agreement, and Microsoft Open License Program. Section VIII and Section IX describes the differences in pricing markup for the various Microsoft licensing programs.

**3. Procurement Project Schedule**

<b>Task</b>	<b>Date</b>
First Advertisement Date for RFP	09/24/13
Second Advertisement Date for RFP	10/01/13
Deadline for Vendor’s Written Questions	3:00 p.m. Central Time on 10/07/13
Deadline for Questions Answered and Posted to <b>ITS</b> Web Site	10/14/13
Open Proposals	10/22/13
Evaluation of Proposals	10/22/13 – 10/30/13
Notification of Award sent to Vendors	11/01/13
Contract Execution	11/15/13
Vendor EPL Sites Approval	11/01/13 – 11/30/13
EPL Start Date	12/01/13
EPL RFP No. 3736 Expiration	11/30/16

**4. Statement of Understanding**

- 4.1 Vendors may request additional information or clarifications to this RFP using the following procedure:
  - 4.1.1 Vendors must clearly identify the specified paragraph(s) in the RFP that is in question.

- 4.1.2 Vendor must deliver a written document to Kay-Lynn Meador at **ITS** by October 7, 2013 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, email, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the vendor that the clarification document reaches **ITS** on time. Vendors may contact Kay-Lynn Meador to verify the receipt of their document. Documents received after the deadline will be rejected.
- 4.2 All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the **ITS** web site by close of business on October 14, 2013.
- 4.3 The requirements in this RFP apply to each Microsoft Licensing Program for which the Vendor is an authorized reseller. It is the intent of this RFP that the winning Vendor or Vendors will be able to provide Microsoft software licenses to **ITS** Customers using the most appropriate licensing program for each entity. This may involve providing a customer with a detailed analysis and comparison of the choices of how to buy Microsoft and helping each customer decide on the program and pricing that best fits their needs.
- 4.4 Vendors must be aware that changes have been made to this EPL submission that differs from the previous Microsoft RFP No. 3640 EPL submission to include guidelines for administrative fees that will be assessed as follows:
- 4.4.1 **ITS** will assess a one-time fee for Vendors to participate in the EPL RFP process. This Fee will cover the cost of validating and processing the Vendor's RFP response. See *Section VIII – Technical Specifications, Item 5 - RFP Vendor Registration Requirements and Instructions.*
- 4.4.2 **ITS** will assess a one percent (1%) administrative fee based on the total amount of sales that are reported by the awarded vendor(s). See *Section XI – Marketing/Sales Report.*
- 4.5 Beginning December 1, 2013, EPL Dollar Limitation changes will take effect for Microsoft EPL 3736 relating to purchase limits and competitive quotations. See Section VIII – Technical Specifications, Item 13.8 – Microsoft EPL Dollar Limitation.
- 4.6 Vendor must be aware that **ITS** wants the most satisfying combination of price and performance within the constraints of this RFP.
- 4.7 The primary term of any contracts signed as a result of this RFP will be for three (3) years. At the end of the initial term, the contract may be extended, upon the written consent of both parties, the length of which will be agreed upon by the parties.

- 4.8 **ITS** deems performance of a Vendor on outstanding contracts and support of the customer after the sale to be of critical importance. Therefore, in the evaluation process for a contract award of new project RFPs, Vendors with good performance ratings on existing accounts will be at a decided advantage while Vendors with poor performance ratings will be at a decided disadvantage or be subject to disqualification at the discretion of the State.
- 4.9 Vendor is solely responsible for all delivery and implementation subject to formal customer acceptance. **ITS** does not encourage the use of subcontractors. Any use thereof must be transparent to the customer with all transactions and payment conducted directly with the awarded Vendor(s).
- 4.10 The State reserves the right to request proposals for the selection of new resellers at the end of the contract term or at any time deemed necessary during the contract.
- 4.11 The State reserves the right to deal directly with or buy directly from the manufacturer.

## 5. RFP Vendor Registration Requirements and Instructions

- 5.1 **ITS** is charging a fee for Vendors to participate in the EPL RFP process. This fee will cover the cost of validating and processing the Vendor's RFP response. **ITS** has partnered with Mississippi Interactive (MSI) to develop and maintain a registration application.
- 5.2 The Vendor will pay a proposal processing fee of \$150 plus an eGovernment transaction fee and a MSI processing fee for the RFP response. The vendor will have two payment options: credit card (VISA, MasterCard, American Express or Discover) or ACH/eCheck. The transaction fees are outlined below for each payment option:
  - 5.2.1 Each credit card transaction will have the following fees: \$150.00 **ITS** fee plus a \$2.25 eGovernment transaction fee and a 2.2% MSI processing fee of \$3.35 for a total of \$155.60.
  - 5.2.2 Each ACH/eCheck transaction will have the following fees: \$150.00 **ITS** fee plus a \$2.25 eGovernment transaction fee and a \$0.25 MSI processing fee for a total of \$152.50.
- 5.3 Provided below is an outline of the steps for the registration process:
  - 5.3.1 Go to the EPL RFP Vendor Registration application located at: [www.ms.gov/its/epl\\_registration/](http://www.ms.gov/its/epl_registration/)
  - 5.3.2 The Vendor will be prompted to provide contact information.
  - 5.3.3 Once all contact and ordering information has been provided, the Vendor will be directed to a "disclaimer" page. The following message will be displayed:

“In order to make payment and complete your registration, you will be redirected to the Mississippi Enterprise Payment System. You will be guided through the payment process and then be returned here to receive your payment confirmation and any additional requirements that may apply. By using this payment system, you attest that you are the account holder or have the written authority to use said account for the purpose of completing the financial obligations and that sufficient funds are available.”

5.3.4 Next, the Vendor will be sent to MSI’s common checkout page (CCP). A Transaction Summary will be displayed and the Vendor will be prompted to select their method of payment (credit card/ACH) then complete the payment process.

5.3.5 After the payment has been successfully transmitted, the Vendor will be generated a receipt confirmation for their records. This receipt will also be e-mailed to them at the e-mail provided in the CCP.

5.3.6 The Vendor’s registration number will be listed on the “receipt” page. The number should look similar to the following: 3637-001

Provide this registration number in response to this item.

5.4 The Vendor’s proposal will not be processed unless the Vendor has completed this process and provided a registration number.

5.5 It is the Vendor’s responsibility to check if their company has already registered. **ITS** is not responsible for duplicate payments.

## 6. General Requirements

6.1 Vendors should propose the best proposal pricing. These costs are **not-to-exceed** costs that can be lowered but not raised at the time of sale. The vendor must propose and provide pricing for the following:

6.1.1 Microsoft Government Select Plus - Level D  
Current Agreement is # 8448630  
Expires 9-30-2015

6.1.2 Microsoft Academic Select Plus – Level A  
Current Agreement is # 5941227  
Expires 12-31-2013

6.1.3 Microsoft Enterprise Agreement (EA) – Level D  
Current Agreement is # 01E62413

6.1.4 Microsoft Campus Agreement/Enrollment for Education Solutions (EES) Agreement  
The Campus Agreement/EES Agreement provides annual

subscriptions to colleges and universities based on their Full Time Equivalents (FTE) of students and faculty.

6.1.4.1 The State currently has a consortia agreement in place that all state community colleges may use. Some individual senior colleges have their own Campus Agreements in place. Current Consortia Campus Agreement # is 01C35668.

6.1.4.2 The State currently has a consortia agreement in place that all Institutions of Higher Learning may use. Current Consortia Agreement # is 01C36077.

6.1.5 Microsoft School Agreement

The School Agreement provides annual subscriptions to K-12 schools based on their number of desktop computers. Some K-12 Schools have their own School Agreements in place.

6.1.6 Microsoft Open License Program for both Government and Academic. The State does not anticipate the need for any MOLP licenses. However, should the need arise, this RFP award would cover that contingency.

6.1.7 Microsoft Shrinkwrap Products

6.1.8 Microsoft Media Documentation

6.2 Vendor must be willing to work with the manufacturer, client and **ITS** for special pricing for large quantity discounts on a project basis.

6.3 Vendor must be willing to work with the LAN/WAN system integrators on implementation and support for their client with the **ITS** customer base.

6.4 Vendor must submit his proposal for the software licenses, providing all associated costs.

6.5 Vendors may optionally propose services to be effective for the three-year term of the RFP and any mutually agreed upon extension.

6.6 Vendors are required to provide a pricing proposal for each of the Microsoft Licensing Programs being solicited under this RFP. Vendor must respond to all sections. It is the State's preference that the Vendor propose both government and education. Should the Vendor only be certified and respond to one or the other, Vendor must provide a full explanation in response to this item and document the advantages your company brings to the table in the arena proposed. **ITS** reserves all rights to award different Vendors in government and education, or to award to one Vendor for both education and government.

- 6.7 Resellers awarded to sell under the Microsoft volume license agreements must agree to follow the ordering processes for licensing and maintenance required by Microsoft. The reseller must have salespersons knowledgeable in the management and administration of the volume license programs.

## 7. Functional and Technical Requirements

### 7.1 Vendor Website

- 7.1.1 Vendor must set up a website allowing state entities to access the software license pricing online. Vendor must describe how this will be facilitated. The **ITS** evaluation team will review and score this site. Vendor must provide a URL for an existing or similar site or a test site that the State may review.
- 7.1.2 The website must at minimum show pricing for Academic Select Plus, Government Select Plus, and Media/Documentation. Vendor must describe the pricing that will be available on the website.
- 7.1.3 Vendor must discuss how updates will be handled and how often prices will be updated. Only price increases resulting from an increase in price by the manufacturer will be accepted.
- 7.1.4 Vendor must guarantee written quotations or website pricing as not-to-exceed pricing for 60 days should manufacturer increase prices. Vendor must also agree to honor the lower price should there be a price decrease.
- 7.1.5 The Vendor must provide details on how the Vendor will ensure the product and pricing is current.
- 7.1.6 Vendor must indicate if the Vendor has an existing website for Mississippi or other Microsoft Select Plus customers that provides access to product and pricing information. Vendor must provide the URL and any needed login information.
- 7.1.7 Vendors with an approved website for other **ITS** software EPLs may use the same site for Microsoft. The Vendor must provide details on the site that will be used.
- 7.1.8 Vendor's website, at minimum, must include the following information for the Microsoft Select Plus catalog:
- 7.1.8.1 Product Name, Manufacturer Part Number, and Contract Price;
  - 7.1.8.2 A feature to allow downloading or printing the entire price list for the Select Price List and Media/Documentation; and

- 7.1.8.3 Other available features. It is specifically NOT required that customers be able to make their purchase online. This site is meant for quotation purposes. Most Mississippi customers will be issuing a follow-up purchase order.
- 7.1.9 Vendor must indicate if a login and password will be required for the Customer to access the website.
  - 7.1.9.1 It is **ITS'** preference that the website maintained by an awarded Vendor not require a password. **ITS** will allow the Vendor to use a "generic" login and password that would be the same for all Mississippi Government customers and/or all Mississippi Educational customers.
  - 7.1.9.2 It is also desired that the proposed website does not require individual logins for each customer in order for them to access the website pricing information.
- 7.1.10 Vendor must provide detailed instructions on how a Customer searches for particular items from the website.
- 7.2 Installation
  - 7.2.1 The awarded Vendor is not required to provide installation services for the software products in this RFP. However, the responding Vendor may optionally propose pricing for installation in Section IX, Cost Information Submission.
  - 7.2.2 If providing installation options, Vendor must state whether these options are provided directly by the Vendor or through a third party. List any third party providers. Provide references for third party providers in the sub-contractor reference Section X.
- 7.3 Training/Support
  - 7.3.1 Vendor is not required to provide training or support services for using the Microsoft software. However, the responding Vendor may optionally propose pricing for training in Section IX, Cost Information Submission.
  - 7.3.2 If providing training options, Vendor must state whether these are provided directly by the Vendor or through a third party. List any third party providers. Provide references for third party providers in the sub-contractor reference Section X.
  - 7.3.3 Since Microsoft licensing requirement often change, Vendor must explain how Vendor will help train or inform customers about

licensing requirements and the pros and cons of the various volume licensing programs.

- 7.3.4 Vendor must indicate whether Vendor is willing to provide any educational seminars or technical briefings. Describe the licensing training/support Vendor has provided in the past and how this would be provided for Mississippi customers. Include in the description whether these are on-site in Mississippi, at Vendor's facilities, via Webinars, via Emails or other means.

#### 7.4 Reporting Requirements

- 7.4.1 Vendors whose products are awarded under this RFP **MUST** maintain a record of sales to be reported on a quarterly basis to **ITS**. The Vendor must provide information as part of their proposal response on the reporting capabilities available, including the content and types of reports, and how to obtain these reports. An acceptable sample report is shown in Section XI, Marketing/Sales Reports.
- 7.4.2 Within fifteen (15) calendar days following the completion of each quarter, the Vendor must submit a Marketing/Sales Report identifying all Express Products Lists ("EPL") sales to **ITS**. A submission schedule for each quarter is provided in Section XI, Marketing/Sales Reports.
- 7.4.3 In addition to the quarterly reporting requirement, Vendor may be asked ad hoc by **ITS** to provide sales reports for government and/or educational purchases or by an individual customer for their account information. Vendor must be able to provide reports summarizing, at minimum, up-to-date sales activity both for statewide sales and individual customer's purchases. Vendor must provide examples of available reports in the proposal submitted in response to this RFP.

#### 7.5 Value Added Services

- 7.5.1 The Vendor is requested to provide details on those goods and services that he is able to provide over and above this RFP's requirements. These services and characteristics should set the Vendor's company apart from competitors. The Vendor must provide all costs for these services.
- 7.5.2 Vendor must indicate whether an outside sales representative will be provided to call on Mississippi customers to assist with their licensing needs. Vendor must name that person and the expected frequency of visits.

**8. Vendor Experience Requirements**

- 8.1 Vendor must describe number of years and participation on the ITS Microsoft EPL (if any).
- 8.2 Vendor must describe number of years and participation on the ITS Software EPL (if any).
- 8.3 Vendor must describe how Vendor has participated in other ITS contracts, such as Hardware EPLs, Software Curriculum EPL or General RFPs.
- 8.4 Vendor must specify to what degree Vendor is experienced with the ITS customer base and provide examples.
- 8.5 Vendor must list other state government or education contracts held by the Vendor for administering a Microsoft Volume License Agreement or other software VLAs.

**9. Vendor Qualifications Requirements**

9.1 Company Qualifications

Vendor must provide information detailing the company's qualifications:

- 9.1.1 Date established (minimum two year requirement);
- 9.1.2 Number of years selling Microsoft Volume Licenses;
- 9.1.3 The State of incorporation (If not a corporation, explain the type business structure – example, LLC, partnership);
- 9.1.4 Ownership information including public or private, parent company and subsidiaries;
- 9.1.5 Changes in control;
- 9.1.6 Corporate/main office location;
- 9.1.7 Office location(s) with street addresses that will serve Mississippi. Designate for each office whether it is used for sales, installation, and/or purchase support;
- 9.1.8 Total number of employees; and
- 9.1.9 Levels of Certifications pertinent to servicing the State.

9.2 Financial Information

- 9.2.1 Vendor must state whether Vendor is under federal bankruptcy proceedings and, if so, describe in detail.

9.2.2 Vendor must provide a current audited financial statement, which must include a letter from a CPA or accounting firm indicating that the financial records have been reviewed. At a minimum, the report should include assets / liabilities and an income / revenue report.

**NOTE:** In the case of a publicly traded company, a copy of the annual report to stockholders or a electronic copy of the annual report on CD that contains the same level of information is sufficient.

Financial information provided in response to this section will be deemed confidential as provided through **ITS** Open Records policy and procedures. If submitting data as part of a parent company, differentiate the parent company data from the responding Vendor's finances. If relying on the financial data of a parent company, supply documentation from the parent company guaranteeing the responding Vendor's performance under this RFP.

9.2.3 Vendor may additionally supply some or all of the following as supporting documentation: (Optional)

- Dun and Bradstreet rating with copy of D & B report. Note **ITS** will not pay D & B for these reports;
- Business Profile or annual report;
- Evidence of other guarantors. Submit supporting documentation;
- Company's credit level with its major supplier. Submit supporting documentation such as a letter from supplier or banker; and
- Other documentation.

### 9.3 Vendor Sales Desk

9.3.1 Vendor must have the resources and staffing available for frequent requests for quotations by telephone, FAX or email. Many customers prefer working directly with a person as opposed to using the Vendor's website.

9.3.2 Vendor's sales desk must be available, at minimum, from 8 a.m. to 5 p.m. Central Time, Monday – Friday, excluding national holidays.

9.3.3 Vendor must provide a toll free number for sales calls.

- 9.3.4 Vendor must describe Vendor's process for handling sales and quotation requests.
- 9.3.5 Vendor must describe Vendor's process for tracking deliveries of products, including estimated delivery time and method for correcting shipment errors.
- 9.3.6 Vendor must describe Vendor's process for billing.
- 9.3.7 The State encourages each customer to have their own Microsoft Select Plus enrollment in order to assist in tracking licenses and obtaining key codes for installation:
  - 9.3.7.1 Describe how the Microsoft enrollment process works and how your company facilitates this; and
  - 9.3.7.2 Describe how the Vendor will provide the customer specialized enrollment or other forms required by Microsoft or the Vendor.
- 9.3.8 Vendor must list the personnel planned to be assigned to handle quotation requests, their supervisors for escalation issues, and any in-house Microsoft experts available for customer inquiries about licensing needs. For each, describe their familiarity and expertise, how long they have worked with Microsoft licensing, and any certifications or training.
- 9.3.9 Vendor must list any Microsoft special certifications held by the company or reseller levels the Vendor may hold.
- 9.3.10 Vendor must explain its' pre-sales process and experience in administering and providing pricing quotations for the Microsoft Enterprise Agreement, Campus Agreement/EES Agreement and School Agreement.
- 9.3.11 Vendor must describe the Microsoft transition process and how your company would handle these occurrences:
  - 9.3.11.1 The ending of a Select Agreement and beginning a new Select Plus Agreement;
  - 9.3.11.2 An incumbent LAR is not re-chosen under the State's RFP selection process. Describe how the customer using that LAR would transition to the selected reseller.
  - 9.3.11.3 A customer is dissatisfied with the performance of their reseller and wishes to transition to another reseller approved by the State. Describe how the customer would transition.

## 10. Pricing Information

- 10.1 The Vendor must propose an initial fixed cost of the product line for each licensing program proposed in addition to providing a method of establishing cost for future updates based on a “plus or minus” percentage of either the Vendor’s cost or a national benchmark as follows:
- 10.1.1 The Vendor must provide its initial proposed price as well as the manufacturer’s base price for the software and the percentage by which the final price to the State exceeds the Vendor’s cost for the software (“cost plus”); or
  - 10.1.2 Vendor may provide its initial proposed price as well as the percentage by which the final price to the State exceeds or is discounted from a national benchmark for the manufacturer such as GSA, Suggested Retail Price (SRP), or the manufacturer’s web pricing (“cost minus”).
- 10.2 Vendors must include in the Pricing Spreadsheets (Section IX), the price the Vendor pays for the software, and the percentage by which the final price to the State of Mississippi exceeds the Vendor’s cost for the software.
- 10.3 The cost-plus/minus percentage will be fixed for the term of the EPL primary term and any extension years. To clarify, the State’s cost for the products will change over the life of the EPL if the price the Vendor must pay for a given product increases or decreases. However, the percentage over Vendor cost which determines the State’s final price WILL NOT increase over the life of the EPL.
- 10.4 For this EPL:
- 10.4.1 The Vendor’s Proposed State Price is defined as the Vendor Cost plus the proposed percentage mark-up;
  - 10.4.2 Vendor Cost is defined as the Vendor’s invoice cost from the distributor or manufacturer; and
  - 10.4.3 The cost-plus percentage applies to new products added in the categories covered by the Cost Matrix as well as the products that are listed.
- 10.5 Vendor must state whether Vendor is using a “Cost Plus” or a “Cost Minus” pricing proposal.
- 10.6 Vendor must explain the specifics of its pricing methodology, including its invoice cost, the relation to Microsoft list price, rebates, and any other factors that affect the ultimate price to the State. Include an explanation of how your company cost is determined by your distributor or by Microsoft. If using the “Cost Minus” method, also include information regarding the national benchmark used and how **ITS** can verify the benchmark pricing.

10.7 Periodic Cost-Plus Verification

At any time during the term of this contract, the State reserves the right to request from the Vendor access to and/or a copy of the Software Publisher's Base Pricing Structure for pricing verification. This pricing shall be submitted within seven (7) business days after the State's request. Failure to submit this pricing will be cause for Contract Default.

11. **Microsoft Products Cost Submission**

11.1 Product Pricing Spreadsheet Completion Instructions/Requirements

11.1.1 The Vendor must provide the Product Pricing Spreadsheet using the directions in Section IX Cost Information Submission for each Select Plus Agreement. It is not necessary to submit the line item pricing spreadsheet for the other Volume License Programs.

11.1.2 The Vendor must include in the proposal submitted in response to this RFP, both paper and electronic copies of the pricing spreadsheets. The electronic files should be submitted on CD and should be in Microsoft Excel format.

11.1.3 Government and Academic pricing should be shown on separate spreadsheets.

11.1.4 Vendor's list must include suggested retail pricing for Microsoft Select Plus products, the Vendor's cost, proposed price for government and education, and the percentage markup used to determine the Vendor's government and education prices for the State.

11.1.5 Vendor must also indicate how future pricing information will be provided to the State during the term of the contract.

11.1.6 Vendor must be aware that only price increases resulting from an increase in price by the manufacturer or distributor will be accepted. The Vendor's proposed percentage markup for these items, as well as the Vendor's percentage markup for any new items, MUST stay the same as what was originally proposed. Vendor must provide **ITS** with the suggested retail price.

11.1.7 Pricing proposed for the State MUST equal the Vendor's invoice cost from the distributor or manufacturer plus the maximum percentage markup that the reseller will add. This includes pricing for software, media, documentation, etc. Failure to price in this manner shall be cause for proposal rejection.

11.1.8 If the percentage of markup is different for media and documentation, the Vendor must indicate what percentage will be used to determine the State's Cost.

- 11.2 Cost-Plus/Minus Percentage Spreadsheet Completion Instructions/ Requirements
- 11.2.1 Vendor must propose their cost markup or percentage discount for all the Microsoft licensing programs as well as the media and documentation requested in this RFP in Section IX, Cost Information Submission. Submit a paper copy of this spreadsheet, showing Government and Academic pricing as separate line items. It is not necessary to submit an electronic copy.
- 11.2.2 The percentages in this table must correspond to those used in the initial line item pricing in the "Product Pricing Spreadsheet."
- 11.2.3 The spreadsheet must show from whom the Vendor purchases the Microsoft Software for each Volume Licensing Agreement (VLA) program. (Example, Microsoft Direct, a named distributor such as Ingram Micro, Tech Data, Douglas Stewart, etc.)
- 11.2.4 The percentage will be used to determine EPL pricing over the term of the contract.
- 11.3 Service and Training Rates Spreadsheet Completion Instructions/ Requirements (Optional)
- 11.3.1 The Vendor may optionally submit costs for not-to-exceed hourly rates for certain services by using the spreadsheet provided in Section IX. Submit a paper copy of this spreadsheet; it is not necessary to submit an electronic copy.
- 11.3.2 Vendor should propose hourly rates based upon standard business hours of 8 x 5, Monday – Friday, excluding holidays. Should customers have needs for after hours services, Vendor may optionally charge up to one and one-half (1 ½) times their service rate, provided Vendor has supplied a written estimate and advised the customer of the after-hours charge.
- 11.3.3 The Hourly Rate for Travel Time covers the time and cost of travel within state boundaries. This rate may not be used on out-of-state travel.
- 11.3.3.1 If there is a need for extended on-site work involving per diem charges for meals, hotels, airfare, etc., customer would authorize these charges through other public purchasing procedures. They are not authorized under this EPL.
- 11.3.3.2 The Hourly Rate for Travel Time may be shown as "Included".

11.3.4 The Vendor must provide to the customer at the time of sale a not-to-exceed estimate of installation and any travel fees to be used in conjunction with services.

11.3.5 Service Categories consist of the following:

- Hourly rate for software installation
- Hourly rate for training
- Daily rate for training
- Hourly rate for miscellaneous services associated with purchase from this RFP
- Hourly rate for travel time

## 12. **Additional Requirements**

12.1 **ITS** acknowledges that the specifications within this RFP are not exhaustive. Rather, they reflect the known requirements that must be met to support our Microsoft Agreements. Vendors must specify, here, what additional services may be needed and are proposed in order to support these agreements.

## 13. **Scoring Methodology**

13.1 An Evaluation Team composed of **ITS** staff will review and evaluate all proposals. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals.

13.1.1 Each category included in the scoring mechanism is assigned a weight between one and 100.

13.1.2 The sum of all categories, other than Value-Add, equals 100 possible points.

13.1.3 Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.

13.1.4 For the evaluation of this RFP, the Evaluation Team will use the following categories and possible points:

<b>Category</b>	<b>Possible Points</b>
Non-Cost Categories:	
Functional and Technical Requirements	15
Vendor Experience Requirements	10
Vendor Qualifications Requirements	20
Total Non-Cost Points	45
Cost	55
Total Base Points	100
Value Add	5
<b>Maximum Possible Points</b>	<b>105</b>

13.2 The evaluation will be conducted in four stages as follows:

13.2.1 Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, Vendor experience, number of copies, bond requirement, timely delivery. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.

13.2.2 Stage 2 – Non-cost Evaluation (all requirements excluding cost)

13.2.2.1 Non-cost categories and possible point values are as follows:

<b>Non-Cost Categories</b>	<b>Possible Points</b>
Functional and Technical Requirements	15
Vendor Experience Requirements	10
Vendor Qualifications Requirements	20
<b>Maximum Possible Points</b>	<b>45</b>

13.2.2.2 Proposals meeting fewer than 80% of the requirements in the non-cost categories may be eliminated from further consideration.

13.2.2.3 **ITS** scores the non-cost categories on a 10-point scale, with 9 points for meeting the requirement. The ‘Meets Specs’ score for each category is 90% of the total points allocated for that category. For example, the Vendor Qualifications Requirements category was allocated 20 points; a proposal that fully met all requirements in that section would have scored 18 points. The additional 10% is used for a proposal that exceeds the requirement for an item in a way that provides additional benefits to the state.

13.3 Stage 3 – Cost Evaluation

13.3.1 Points will be assigned using the following formula:

$$(1 - ((B - A) / A))^n$$

Where:

A = Total lifecycle cost of lowest valid proposal

B = Total lifecycle cost of proposal being scored

n = Maximum number of points allocated to cost for acquisition

13.3.2 Cost categories and maximum point values are as follows:

<b>Cost Category</b>	<b>Possible Points</b>
Lifecycle Cost	55
<b>Maximum Possible Points</b>	<b>55</b>

13.4 Stage 4 – Selection of the successful Vendor

The non-cost and cost scores will be combined to determine the vendor's final score.

13.5 On-site Demonstrations and Interviews

At the discretion of the State, evaluators may request interviews, on-site presentations, demonstrations or discussions with any and all Vendors for the purpose of system overview and/or clarification or amplification of information presented in any part of the proposal.

13.6 Final Quantitative Evaluation - Following any requested presentations, demonstrations, and/or site visits, the Evaluation Team will re-evaluate any technical/functional scores as necessary. The technical/functional and cost scores will then be combined to determine the Vendor's final score.

13.7 The State's intent in issuing an EPL RFP is to develop and publish a list of one or more approved Vendors to provide products and services from which Mississippi government and educational entities can make legal purchases. The EPL evaluation process includes initial evaluation by **ITS** as well as a subsequent evaluation by each EPL customer based on its specific needs.

13.8 Microsoft EPL Dollar Limitation

13.8.1 Beginning December 1, 2013, the following changes will take effect for the Microsoft EPL 3736:

13.8.1.1 For purchases under \$50,000 per fiscal year, customer may elect to request quotations from a single EPL Vendor or, if available, more than one EPL Vendor.

13.8.1.1 For purchases over \$50,000 per fiscal year, but less than \$500,000, the customer must solicit competitive quotations from at least two Microsoft EPL Vendors. The customer would select the lowest and best proposal using guidelines published with the EPL without further **ITS** involvement. This proposed requirement assumes there is a multi-vendor award under RFP No. 3736.

**NOTE:** Purchases over \$500,000 per fiscal year must be approved by **ITS** for additional spending authority.

13.8.2 For informational purposes, Vendor is advised that the current customer instructions for soliciting and scoring these quotations are available at:

<http://www.its.ms.gov/Procurement/Pages/Microsoft.aspx>

13.8.3 In the case of an Enterprise Agreement, or when an initial three year commitment is made for Software Assurance under Select Plus, it is not required that the customer continue to solicit quotations among EPL Vendors after year one of the three year EA or SA term.

**NOTE:** **ITS** always suggests as part of “Best Practices” that EPL Customers obtain quotations from multiple EPL Vendors, carefully comparing “apples-to-apples” as much as possible. Customers choose a “lowest and best” Vendor based predominantly on cost but also consider such factors as technical evaluation, installation services, and qualifications of proposed staff, references, and previous history with the Vendor.

**SECTION IX  
 COST INFORMATION SUBMISSION  
 PRODUCT PRICING SPREADSHEET**

- Vendors must propose a summary of an initial fixed cost of the Microsoft product line for both the Government and Academic Select Plus Agreements. A sample matrix follows.
- **ITS** has posted spreadsheets with a sub-set of Microsoft SKUs that meet this format on our website at <http://www.its.ms.gov/procurement/pages/3736.aspx> for both Government and Education. Please use these pre-defined spreadsheets for your cost response. It is not necessary to submit a spreadsheet with all Microsoft SKU numbers.
- Submit both a hard copy of the completed spreadsheets in your binder as well as an electronic copy on CD.

**RESPONDING VENDOR NAME:** \_\_\_\_\_

**MANUFACTURER:** Microsoft

Mfg. Product Number	Vendor Part Number (Optional)	Product Description	Mfg. Suggested Gov./Academic Retail Price	Vendor's Invoice Cost from Mfg. or Distributor	Vendor's Percentage Markup or Percentage Discount off of List	Vendor's Proposed State Price	Other

**COST-PLUS/MINUS PERCENTAGE SPREADSHEET**

- Vendor must propose a “plus” percentage added to the Vendor’s cost or “minus” percentage subtracted from a national benchmark in the matrix that follows.
- Vendor should add additional lines if the percentages vary within each program, for instance, if the percentage is different for a License only vs Software Assurance Only vs. License plus Software Assurance.
- Submit a hard copy of the spreadsheet in your proposal binder. It is not necessary to submit an electronic copy.

**RESPONDING VENDOR NAME:** \_\_\_\_\_

**MANUFACTURER:** Microsoft

<b>Purchasing Program</b>	<b>Purchasing Source (Direct from Microsoft or name Distributor)</b>	<b>Cost Plus or Benchmark minus Percentage</b>
Government Select Plus		
Academic Select Plus		
Enterprise Agreement		
Campus Agreement/EES Agreement		
School Agreement		
Government Open License		
Academic Open License		
Shrinkwrap		
Media Kits		
Documentation		

### SERVICES SPREADSHEET

Vendor MAY propose service options in the matrix that follows.

RESPONDING VENDOR NAME: \_\_\_\_\_

- If a service is not available, please show “N/A” for any or all of the requested services.
- If proposing a cost, submit a not-to-exceed price that can be lowered but not raised at the time of the customer’s project.
- Do not create service categories other than those shown.
- Submit a hard copy of the spreadsheet in your proposal binder. It is not necessary to submit an electronic copy.

<b>HOURLY RATE FOR SOFTWARE INSTALLATION</b>	N/A or \$\$\$
<b>HOURLY RATE FOR TRAINING</b>	N/A or \$\$\$
<b>DAILY RATE FOR TRAINING</b>	N/A or \$\$\$
<b>HOURLY RATE FOR MISCELLANEOUS SERVICES ASSOCIATED WITH PURCHASE FOR THIS RFP</b>	N/A or \$\$\$
<b>HOURLY RATE FOR TRAVEL TIME</b>	INC or \$\$\$

## SECTION X REFERENCES

Please return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

### 1. References

- 1.1 The Vendor must provide at least five (5) references consisting of Vendor accounts that the State may contact. Required information includes customer contact name, address, telephone number, email address, and engagement starting and ending dates. Forms for providing reference information are included later in this RFP section. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession.
- 1.2 Any of the following may subject the Vendor's proposal to being rated unfavorably relative to these criteria or removed from further consideration, at the State's sole discretion:
  - 1.2.1 Failure to provide reference information in the manner described;
  - 1.2.2 Inability of the State to substantiate minimum experience or other requirements from the references provided;
  - 1.2.3 Non-responsiveness of references to the State's attempts to contact them; or
  - 1.2.4 Unfavorable references that raise serious concerns about material risks to the State in contracting with the Vendor for the proposed products or services.
- 1.3 References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
- 1.4 The reference installation must be for a project similar in scope and size to the project for which this RFP is issued;
  - 1.4.1 The reference installation must have been operational for at least six (6) months.
- 1.5 The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Vendor's list of references, and to utilize such information in the evaluation of the Vendor's proposal.
- 1.6 Unless otherwise indicated in the Scoring Methodology in Section VIII, reference information available to the State will be used as follows:

- 1.6.1 As documentation supporting mandatory experience requirements for companies, products, and/or individuals, as required in this RFP;
  - 1.6.2 To confirm the capabilities and quality of a Vendor, product, or individual for the proposal deemed lowest and best, prior to finalizing the award.
- 1.7 The State reserves the right to forego reference checking when, at the State's sole discretion, the evaluation team determines that the capabilities of the recommended Vendor are known to the State.

**2. Subcontractors**

The Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.

Unless otherwise noted, the requirements found in the References section may be met through a combination of Vendor and subcontractor references and experience. Vendor's proposal should clearly indicate any mandatory experience requirements met by subcontractors.

**NOTE:** The State reserves the right to eliminate from further consideration proposals in which the prime Vendor does not, in the State's sole opinion, provide substantive value or investment in the total solution proposed. (i.e. the State does not typically accept proposals in which the prime Vendor is only a brokering agent.)

## REFERENCE FORM

### Complete five (5) Reference Forms.

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

Description of product/services/project, including start and end dates:

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### SUBCONTRACTOR REFERENCE FORM

**Complete a separate form for each subcontractor proposed.**

Contact Name:  
Company name:  
Address:  
Phone #:  
E-Mail:

Scope of services/products to be provided by subcontractor:

**Complete three (3) Reference Forms for each Subcontractor.**

Contact Name:  
Company name:  
Address:  
Phone #:  
E-Mail:

Description of product/services/project, including start and end dates:

## **SECTION XI MARKETING / SALES REPORT**

### **1. Overview**

- 1.1 Vendors whose products are awarded under this RFP **MUST** maintain a record of sales to be reported on a quarterly basis to **ITS**.
- 1.2 Within fifteen (15) calendar days following the completion of each quarter, the Vendor should submit a Marketing/Sales Report identifying all Express Products Lists ("EPL") sales to **ITS**. Upon receipt of the report, **ITS** will review the Marketing/Sales Report and assess a one percent (1%) EPL Administrative Fee based on the total amount of sales that are reported, in accordance with Mississippi Code Section 25-53-29 (4).
- 1.3 The EPL Administrative Fee is used by the State to defray the costs associated with soliciting, awarding and administering Express Products Lists, and is referenced in the Master Purchase Agreements for Express Product List (EPL).
- 1.4 The EPL Administrative Fee is the responsibility of the Vendor. The EPL Administrative Fee will not be charged directly to the customer in the form of a separate line item.

### **2. Fee Amount**

- 2.1 Unless defined differently within the Master Purchase Agreement, the EPL Administrative Fee shall be one percent (1.0%) of quarterly sales receipts under an active Master Purchase Agreement.
- 2.2 The EPL Administrative Fee percentage is applicable to amounts where the Vendor has received a purchase order.

### **3. Method of Assessment**

- 3.1 At the completion of each quarter, the Vendor reviews all sales in preparation for submission of their Marketing/Sales Report.
- 3.2 The Vendor identifies all sales receipts transacted by customers using the Express Products List (EPL) as their procurement instrument.
- 3.3 After receiving the Vendor's Marketing/Sales Report, the Mississippi Department of Information Technology Services (**ITS**) will review said report and assess the one percent (1.0 %) EPL Administrative Fee based on the total amount of sales listed in the Marketing/Sales Report.

#### 4. **Submission Schedule**

- 4.1 Within fifteen (15) days following the end of the quarter, the Vendor must submit their Marketing/Sales Report to the Department of Information Technology Services.
- 4.2 Vendors will be invoiced by the end of the month following the Fiscal Quarter with payment of the EPL Administrative Fee due by the last day of the following month. The EPL Administrative Fee Submission schedule is as follows:
- **Fiscal Quarter 1** (December 1st – February 28th)  
Marketing/Sales Report Due by March 15th  
Invoice Received from **ITS** by April 1st  
Payment Due by April 30th
  - **Fiscal Quarter 2** (March 1st - May 31st)  
Marketing/Sales Report Due by June 15<sup>th</sup>  
Invoice Received from **ITS** by July 1<sup>st</sup>  
Payment Due by July 31st
  - **Fiscal Quarter 3** (June 1st – August 31<sup>st</sup>)  
Marketing/Sales Report Due by September 15<sup>th</sup>  
Invoice Received from **ITS** by October 1st  
Payment Due by October 31st
  - **Fiscal Quarter 4** (September 1st - November 30th)  
Marketing/Sales Report Due by December 15<sup>th</sup>  
Invoice Received from **ITS** by January 1<sup>st</sup>  
Payment Due by January 31st

#### 5. **Vendor Penalties**

- 5.1 Vendor failure to submit a Marketing/Sales Report within 3 working days after the due date will result in a suspension from the EPL. Vendor is subject to reinstatement after sending in the delinquent Marketing/Sales Report and making payment for the quarterly administrative fees.
- 5.2 Vendor failure to submit payment of the EPL quarterly administrative fees by the due date will result in an immediate suspension until all outstanding fees are paid in full. Vendor is subject to reinstatement after all delinquent fees are bought current.

#### 6. **Report Format**

- 6.1 Vendors must include the following fields in the Marketing/Sales Report submitted at the completion of each quarter:
- 6.1.1 Date;

- 6.1.2 Client Name;
- 6.1.3 Purchase Order Number;
- 6.1.4 Purchase Order Summary; and
- 6.1.5 Total

6.2 The following table shows an example of an acceptable marketing/sales report:

<b>Date</b>	<b>Client Name</b>	<b>Purchase Order #</b>	<b>Purchase Order Summary</b>	<b>Total</b>
04/25/2013	MDOT	PO 249463	25 Microsoft Office	\$\$\$\$\$
04/25/2013	MDOT	PO 229885	25 Microsoft PowerPoint	\$\$\$\$\$
01/13/2013	Health	PO 222257	15 Microsoft Excel	\$\$\$\$\$
12/14/2012	Jackson State University	PO 199896	30 Microsoft Office	\$\$\$\$\$
03/25/2013	Tunica County Schools	PO 233387	10 Microsoft Excel	\$\$\$\$\$
05/25/2013	Carroll County Schools	PO 313001	4 Microsoft Access	\$\$\$\$\$
08/22/2013	Lauderdale County Schools	PO 566471	1 Microsoft Outlook	\$\$\$\$\$
<b>Total</b>				<b>\$\$\$\$\$</b>

6.3 Vendors should not include private schools, private colleges, or federal government agencies in the marketing/sales report.

Vendors may reference the links below to verify whether a client is under **ITS** purview or a government organization that uses ITS EPLs by choice. Both of these categories of customers should be included in the Marketing/Sales report:

- State Agencies  
[http://www.ms.gov/agency\\_directory/default.aspx](http://www.ms.gov/agency_directory/default.aspx)
- Institutions of Higher Learning (IHLs)  
<http://www.ms.gov/content/Pages/CollegesUniversities.aspx>
- Community Colleges (CC)  
<http://www.ms.gov/content/Pages/CollegesUniversities.aspx>
- K-12  
<http://www.mde.k12.ms.us/map?ShowList=1>
- Governing Authorities - any PUBLIC city or county government including public libraries and hospitals

7. **Report Information**

- 7.1 Failure to provide quarterly sales information will be cause for disqualification from evaluation in the next Microsoft EPL cycle.
- 7.2 If there were no sales during a reporting period, the Vendor must submit a Marketing/Sales Report showing "No Sales".
- 7.3 **ITS** reserves the right to request more detailed sales information on an individual basis.
- 7.4 **ITS** will compile the individual reports into a Summary Marketing/Sales Report. The Summary Marketing/Sales Report will not show individual client names, only total sales from each Vendor. The Summary Marketing/Sales Report will become the property of **ITS** with the right to publish, reproduce or distribute without notification. Vendor's submission of a response to this RFP will constitute acceptance of this policy. Vendors may request a copy of this report under the **ITS** Open Records Procedure.
- 7.5 Any requests other than the Summary Marketing/Sales Report for copies of an individual Vendor's marketing/sales report or any other information that is part of the Vendor's proposal will fall under **ITS** open records policy as defined in the **ITS** Procurement Handbook.
- 7.6 It is not necessary to submit a paper copy of your marketing/sales report.
- 7.7 The **ITS** staff places a high value on this historical information. We acknowledge the effort entailed in compiling this information and offer our appreciation in advance.
- 7.8 Incumbent Vendors awarded under Microsoft EPL **ITS** must submit their 2013 report with their proposal response to RFP 3736 in response to this section, showing sales thus far in 2013.

**APPENDIX A  
STANDARD CONTRACT  
Non-ARRA Version**

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with **ITS**.

Due to the need for uniformity among EPL Vendors, the terms of the Master Purchase Agreement are non-negotiable.

**Non-ARRA Version**

**PROJECT #40638  
MASTER PURCHASE AGREEMENT  
BETWEEN  
INSERT NAME OF VENDOR  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR THE  
AGENCIES AND INSTITUTIONS OF THE STATE OF MISSISSIPPI**

This Master Purchase Agreement (hereinafter referred to as "Master Agreement") is entered into by and between **INSERT NAME OF VENDOR**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT STREET ADDRESS FOR VENDOR** (hereinafter referred to as "Seller"), and the Mississippi Department of Information Technology Services, having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the governmental agencies and educational institutions of the State of Mississippi (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State". ITS and Seller are sometimes collectively referred to herein as "Parties".

**WHEREAS**, ITS, pursuant to Request for Proposals (hereinafter referred to as "RFP") Number 3736, requested proposals for the selection of vendors to fulfill the requirements of a Microsoft authorized reseller under the terms of all Microsoft licensing programs which the State has entered into with Microsoft, including but not limited to, the Microsoft Select Plus Agreements for government and education, Microsoft Enterprise Agreement, Microsoft Campus Agreement/Enrollment for Education Solutions Agreement and Microsoft School Agreement, as well as other Microsoft licensing such as the Microsoft Open License Program;

**WHEREAS**, Seller was a successful proposer in an open, fair and competitive procurement process to serve as an authorized reseller;

**WHEREAS**, ITS desires to enter into a Master Agreement containing the terms and conditions which will govern any orders placed by the Purchaser during the term of this Master Agreement for Microsoft software ("Products") and services from Seller as specified in RFP No. 3736;

**NOW THEREFORE**, in consideration of the mutual understandings, promises, consideration and agreements set forth, the Parties hereto agree as follows:

**ARTICLE 1 TERM OF AGREEMENT**

Unless terminated as prescribed elsewhere herein, this Master Agreement will become effective on the date it is signed by all Parties (the "Effective Date") and will continue in effect through November 30, 2016, or until all warranties provided by Seller to Purchaser have expired, whichever occurs last. At the end of the initial term, the Master Agreement may, upon the written agreement of the Parties, be renewed for additional terms, the length of which will be agreed upon by the Parties. Sixty (60) days prior to the expiration of the initial or any renewal term of this Master Agreement, Seller shall notify ITS in writing of the impending expiration and

thereafter ITS shall notify Seller of its intent to either renew or cancel the Master Agreement.

## **ARTICLE 2 MODIFICATION OR RENEGOTIATION**

This Master Agreement may be modified only by written agreement signed by the Parties hereto, and any attempt at oral modification shall be void and of no effect. The Parties agree to renegotiate the Master Agreement and any pertinent supplement /purchase order if federal and/or state revisions of any applicable laws or regulations make changes in this Master Agreement and any pertinent supplement/purchase order necessary.

## **ARTICLE 3 INCLUDED PARTIES**

Seller will accept orders from and furnish the Products and services under this Master Agreement to any governmental agency, governing authority, or educational institution within Mississippi, at prices not to exceed those specified in Seller's Proposal in response to RFP No. 3736.

## **ARTICLE 4 ADDITIONAL TERMS AND CONDITIONS**

All provisions in this Master Agreement are in addition to the requirements of RFP No. 3736 and Seller's Proposal in response thereto, which are both incorporated into and made a part of this Master Agreement.

## **ARTICLE 5 ORDERS**

**5.1** The State does not guarantee that it will purchase any minimum amount under this Master Agreement.

**5.2** The Parties agree that some or all of the Products and/or Services as proposed by Seller may be published as the Microsoft Express Products List ("EPL"). ITS and Seller will mutually agree on the format and content of the EPL.

**5.3** When a Purchaser decides to procure any Products and/or services from Seller, the Purchaser shall execute a supplement/purchase order to be signed by Seller and an authorized representative of the Purchaser. The supplement/purchase order shall set forth the Products/services to be procured; the prices for same; any warranty period, the specific details of the transaction, and any additional terms and conditions agreed to by the Seller and Purchaser. All supplements/purchase orders shall be governed by, and incorporate by reference, the terms and conditions of this Master Agreement. Excluding better pricing and/or discounts which may be specified in a supplement/purchase order, in the event of a conflict between the other terms and conditions in the supplement/purchase order or the terms of any document provided by Seller or its subcontractors, and this Master Agreement, the terms and conditions of this Master Agreement shall prevail. The Parties agree that the Purchaser has the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by the Purchaser.

**5.4** Seller guarantees its pricing for the term of RFP No. 3736. In the event there is a national price decrease of the Products bid during that time, Seller agrees to extend the new, lower pricing to Purchaser. Seller shall not increase its pricing during the term of this Master Agreement unless Microsoft has issued a price increase for the particular Product. Regardless of any price increase or decrease, the discount structure shall remain the same during the term of this Master Agreement.

**ARTICLE 6 PRODUCT CHANGES**

**6.1** Seller and ITS may, at any time, mutually agree in writing to amend the list of Products specified in Seller's Proposal in response to RFP No. 3736 so as to add other Products which shall then be available to Purchaser under the terms of this Master Agreement.

**6.2** Seller shall be under no obligation to continue to stock in its inventory any Product, and Seller may delete any Products discontinued by Microsoft from the list of Products specified in Seller's Proposal in response to RFP No. 3736 at any time. Seller shall provide prior written notice to ITS that the Products are being discontinued by Microsoft.

**ARTICLE 7 METHOD OF PAYMENT**

**7.1** Once the Products have been accepted by Purchaser as prescribed in Article 8 herein, or there has been lack of notice to the contrary, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Seller shall submit invoices and supporting documentation electronically during the term of this Master Agreement using the processes and procedures identified by the State. Services will be invoiced as they are rendered. Purchaser agrees to pay Seller in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. All payments shall be in United States currency. Payments by state agencies that make payments through the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller's choice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in Article 37 herein.

**7.2** If payment of undisputed amounts is not made to Seller within forty-five (45) days of Purchaser's receipt of the invoice, Purchaser shall be liable to Seller for interest at a rate of one and one-half percent (1 ½%) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

**7.3** Acceptance by Seller of the last payment from the Purchaser under a supplement/purchase order shall operate as a release of all claims against the State by Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under a supplement/purchase order.

**ARTICLE 8 DELIVERY; RISK OF LOSS; INSTALLATION, AND ACCEPTANCE**

**8.1** Seller shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule mutually agreed to by the Seller and Purchaser.

**8.2** All Products shall be delivered to the Purchaser suitably packed for ground shipment in Seller standard shipping cartons, marked for shipment to one of Purchaser's ship-to locations identified in each supplement/purchase order, and delivered to Purchaser F.O.B. Destination.

**8.3** Seller shall assume and shall bear the entire risk of loss and damage to the Products

from any cause whatsoever while in transit and at all times throughout its possession thereof.

**8.4** If installation by Seller is required, Seller acknowledges that installation of the Products shall be accomplished with minimal interruption of Purchaser's normal day to day operations, and that the installation will be pursuant to the requirements of the Purchaser.

**8.5** Seller warrants that all Products shall be properly delivered, installed and integrated, if necessary, for acceptance testing within the scheduling deadlines agreed to by the Seller and Purchaser as the site is deemed ready for installation. If installation by Seller is required, Seller shall provide Purchaser with an installation schedule identifying the date, time and location within the scheduling deadlines agreed to by the Seller and Purchaser.

**8.6** Unless a different acceptance period is agreed upon in writing by Seller and the Purchaser, Purchaser shall accept the Products provided by Seller after a thirty (30) calendar day testing period utilizing testing criteria developed by Purchaser. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that they perform without any defects and perform pursuant to Microsoft's Product specifications. Purchaser shall notify Seller in writing of its acceptance of the Products.

**8.7** In the event the Product fails to perform as stated in Article 8.6 herein, Purchaser shall notify Seller. Unless a different period of time is agreed to by Seller and the Purchaser, Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Seller neither corrects the defects nor replaces the defective Product, Purchaser reserves the right to return the Product to Seller at Seller's expense and to cancel the supplement/purchase order.

## **ARTICLE 9 WARRANTIES**

**9.1** Seller represents and warrants that it has the right to license the software Products provided under this Master Agreement.

**9.2** Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from Microsoft.

**9.3** Unless a longer warranty period is specified in the supplement/purchase order, Seller represents and warrants, for a period of ninety (90) days from performance of the service, that all work hereunder, including but not limited to, consulting, training and technical support, has been performed in a good and workmanlike manner and consistent with generally accepted industry standards. For any breach of this warranty, Seller shall perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

**9.4** Unless a different warranty is stated in the supplement/purchase order, Seller represents and warrants that the Products will operate free from defects for a period of ninety (90) days after acceptance, and will provide Purchaser complete functionality necessary for the operation of the system. Seller's obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the Product at the expense of Seller. In the event Seller is unable to repair or replace the Product within ten (10) working days after receipt of notice of the defect, Purchaser shall be entitled to a full refund of fees paid and shall have the right to terminate the supplement/purchase order and this Master Agreement in whole or in part

solely as between Seller and Purchaser. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

**9.5** Seller represents and warrants that there is no disabling code, lockup program or device embedded in the Products provided to Purchaser. Seller further agrees that it will not, under any circumstances, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's licensed use of the Products and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transactions of Purchaser's business. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

**9.6** Seller represents and warrants that there is no computer virus contained in the Products when delivered to Purchaser. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Products that will damage or destroy Purchaser's applications or data. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of any virus, and shall be responsible for repairing, at Seller's expense, any and all damage done by the virus to Purchaser's site.

**9.7** Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Seller agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Seller understands and agrees that any breach of these warranties may subject Seller to the following: (a) termination of this Master Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

**9.8** Seller represents and warrants that it will comply with the state's data breach notification laws codified at Section 75-24-29 of the Mississippi Code Annotated (Supp. 2012). Further, to the extent applicable, Seller represents and warrants that it will comply with the applicable provisions of the HIPAA Privacy Rule and Security Regulations (45 CFR Parts 160, 162 and 164) ("Privacy Rule" and "Security Regulations", individually; or "Privacy and Security Regulations", collectively); and the provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the "HITECH Act").

**ARTICLE 10 INFRINGEMENT INDEMNIFICATION**

**10.1** Seller represents and warrants that neither the Products, their elements nor the use thereof violates or infringes on any copyright, patent, trade secret or other proprietary right of any person or entity. Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the Products provided under this Master Agreement and shall pay all costs, attorney fees, settlements, damages and judgment finally awarded against Purchaser, provided that: (i) Purchaser promptly notifies Seller in writing of any such claim of which it has knowledge; (ii) Seller has, to the extent authorized by Mississippi law, sole control of the defense of any actions and negotiations related to the defense or settlement of any claim, and (iii) Purchaser cooperates in the defense of the claim by supplying Seller all relevant information currently available and in its possession, all at Seller's expense.

**10.2** If Seller believes that the Product is or will become the subject of an infringement claim, or in the event that use of the Product is enjoined, Seller, at its own expense, shall: (a) first procure for Purchaser the right to continue using the Product, or upon failing to procure such right; (b) modify or replace the Product to make it non-infringing while maintaining substantially similar software functionality or data/informational content, or upon failing to secure either such right, (c) request Purchaser to return the infringing items to Seller and Seller shall refund the software license fees previously paid by Purchaser for the Products the Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

**10.3** Seller shall have no indemnification obligations to Purchaser under this Article for any infringement resulting directly from: (i) the combination or use of the Product with other items not provided by Seller; (ii) material modification of the Product by someone other than Seller, its agents or subcontractors or Purchaser's employees who were working at Seller's direction, where such modification creates the infringement; (iii) use of an allegedly infringing version of the Product if the alleged infringement would have been avoided by the use of a different version Seller made available to Purchaser at no cost to Purchaser, as long as the new or corrected version did not adversely affect the Purchaser's system's functionality.

**ARTICLE 11 EMPLOYMENT STATUS**

**11.1** Seller shall, during the entire term of this Master Agreement, be construed to be an independent contractor. Nothing in this Master Agreement is intended to nor shall it be construed to create an employer-employee relationship or a joint venture relationship.

**11.2** Seller represents that it is qualified to perform the duties to be performed under this Master Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Master Agreement. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Purchaser. Seller shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to state retirement or leave benefits.

**11.3** Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may,

however, direct Seller to replace any of its employees under this Master Agreement. If Seller is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Seller will not charge Purchaser for those hours.

#### **ARTICLE 12 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff and/or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations to install or repair Products shall be covered by Seller's comprehensive general liability insurance policy.

#### **ARTICLE 13 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**13.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the Parties agree that Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for any given Purchaser project. The Purchaser is only required to negotiate with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors.

**13.2** Neither party to a supplement/purchase order and this Master Agreement may assign or otherwise transfer the supplement/purchase order and/or this Master Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. The supplement/purchase order and this Master Agreement shall be binding upon the Parties' respective successors and assigns.

**13.3** Seller must obtain the written approval of Purchaser before subcontracting any portion of the supplement/purchase order and this Master Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in the supplement/purchase order. All subcontracts shall incorporate the terms of the supplement/purchase order and this Master Agreement and shall be subject to the terms and conditions of same and to any conditions of approval that Purchaser may deem necessary.

**13.4** Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with Seller. Seller shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Seller's failure to pay any and all amounts due by Seller to any subcontractor, materialman, laborer or the like.

**13.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between Seller and the Purchaser, where such dispute affects the subcontract.

#### **ARTICLE 14 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Purchaser to proceed under this Master Agreement and the supplement/purchase order is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Master Agreement. If the funds anticipated for the fulfillment of this Master Agreement and the supplement/purchase order are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Master Agreement, Purchaser shall have the right to immediately terminate the supplement/purchase order and this Master Agreement as to itself only, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under the supplement/purchase order and this Master Agreement. Any payment due Seller for services rendered by Seller prior to termination and received by Purchaser shall be paid.

#### **ARTICLE 15 TERMINATION**

**15.1 Termination Upon Mutual Agreement:** The supplement/purchase order may be terminated in whole or in part upon the mutual written agreement of Seller and the Purchaser.

**15.2 Termination Due To Bankruptcy:** Should Seller become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Purchaser may terminate a supplement/purchase order and this Master Agreement solely as between those two entities and without the assessment of penalties.

**15.3 Termination Other Than For Cause:** A Purchaser may terminate the supplement/purchase order and this Master Agreement as to itself only, in whole or in part and without the assessment of penalties, for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller.

**15.4 Termination For Cause:** Either Purchaser or Seller may terminate a supplement/purchase order and this Master Agreement solely as between those two entities upon a material breach by the other party upon thirty (30) calendar days prior written notice unless the defaulting party cures such breach within such thirty (30) calendar-day period, or such other cure timeframe as may be mutually agreed upon by the Seller and Purchaser. Provided that, if the Purchaser terminates a supplement/purchase order and this Master Agreement solely as between those two entities because of Seller's inability to cure material defects after notice and opportunity to cure, the Purchaser may terminate the supplement/purchase order and this Master Agreement solely as between those two entities without also providing the notice and opportunity to cure required in this Article. The non-defaulting party may also pursue any remedy available to it in law or in equity.

**15.5 Termination of Master Agreement:** ITS may terminate the Master Agreement without the assessment of penalties for any reason after giving thirty (30) calendar days written notice specifying the effective date thereof to Seller, but any supplement/purchase order entered into prior to the termination date of the Master Agreement shall survive the termination of the Master Agreement. The terms of this Master Agreement shall survive its termination/expiration with

respect to any un-expired supplements/purchase orders.

**15.6** Upon termination of a supplement/purchase order, Seller shall refund any and all applicable unexpended pro-rated support/service fees previously paid by the Purchaser. Further, in the event a supplement/purchase order is terminated, Seller shall receive just and equitable compensation for satisfactory work completed by Seller and accepted by Purchaser prior to the termination. Such compensation shall be based upon and shall not exceed the amounts set forth in the particular supplement/purchase order.

#### **ARTICLE 16 GOVERNING LAW**

This Master Agreement and each supplement/purchase order shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Seller expressly agrees that under no circumstances shall Purchaser or ITS be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Seller. Further, nothing in this Master Agreement shall affect any statutory rights Purchaser may have that cannot be waived or limited by contract.

#### **ARTICLE 17 WAIVER**

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Master Agreement. A waiver by the State, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

#### **ARTICLE 18 SEVERABILITY**

If any term or provision of a supplement/purchase order or this Master Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the supplement/purchase order or this Master Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that the Purchaser's purpose for entering into the supplement/purchase order can be fully achieved by the remaining portions of the supplement/purchase order that have not been severed.

#### **ARTICLE 19 CAPTIONS**

The captions or headings in this Master Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Master Agreement.

#### **ARTICLE 20 HOLD HARMLESS**

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Seller and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform the supplement/purchase order and this Master Agreement.

#### **ARTICLE 21 THIRD PARTY ACTION NOTIFICATION**

Seller shall notify Purchaser and ITS in writing within five (5) business days of Seller filing

bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to the supplement/purchase order or this Master Agreement and/or which may affect the Seller's performance under the supplement/purchase order and this Master Agreement. Failure of the Seller to provide such written notice to Purchaser and ITS shall be considered a material breach of this Master Agreement and the Purchaser and ITS may, at their sole discretion, pursue their rights as set forth in the Termination Article herein and any other rights and remedies they may have at law or in equity.

#### **ARTICLE 22 AUTHORITY TO CONTRACT**

Seller warrants that it is a validly organized business with valid authority to enter into this Master Agreement; that entry into and performance under this Master Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Master Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under a supplement/purchase order and this Master Agreement.

#### **ARTICLE 23 NOTICE**

Any notice required or permitted to be given under this Master Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their usual business address. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Seller's address for notice is: **INSERT NAME, TITLE, AND ADDRESS OF VENDOR PERSON FOR NOTICE**. Notice shall be deemed given when actually received or when refused. The Parties agree to promptly notify each other in writing of any change of address.

#### **ARTICLE 24 RECORD RETENTION AND ACCESS TO RECORDS**

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Master Agreement and the supplement/purchase order. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall, at their expense and upon prior reasonable notice to Seller, have access to any of the Seller's books, documents, papers and/or records that are pertinent to this Master Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Seller's office as applicable where such records are kept during normal business hours. All records relating to this Master Agreement and the supplement/purchase order shall be retained by the Seller for three (3) years from the date of receipt of final payment under this Master Agreement and the supplement/purchase order. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

#### **ARTICLE 25 INSURANCE**

Seller represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Seller's personnel, as well as comprehensive general liability

and employee fidelity bond insurance. Seller will, upon request, furnish Purchaser with a certificate of conformity providing the aforesaid coverage.

## **ARTICLE 26 DISPUTES**

**26.1** Should disputes arise with respect to the supplement/purchase order and/or this Master Agreement, Seller and Purchaser agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Seller agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under the supplement/purchase order and/or this Master Agreement. Should Seller fail to continue without delay to perform its responsibilities under the supplement/purchase order and/or this Master Agreement in the accomplishment of all work, any additional costs incurred by Seller or Purchaser as a result of such failure to proceed shall be borne by Seller and Seller shall make no claim against Purchaser for such costs.

**26.2** If Seller and Purchaser cannot resolve a dispute within ten (10) calendar days following written notification by either party of the existence of said dispute, then the following procedure shall apply:

**A.** Seller and Purchaser agree to resolve such matters through submission of their dispute to the Executive Director of ITS, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Seller and Purchaser within ten (10) calendar days after presentation of such dispute for his/her decision.

**B.** Purchaser may withhold payments on disputed items pending resolution of the dispute. The withholding of such payments shall not constitute cause for termination or suspension of the supplement/purchase order and/or this Master Agreement by Seller.

**C.** Disagreement with the Executive Director's decision by either party shall not constitute a breach under the terms of this Master Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

## **ARTICLE 27 COMPLIANCE WITH LAWS**

Seller shall comply with, and all activities under a supplement/purchase order and this Master Agreement shall be subject to, all Purchaser policies and procedures of which Seller has knowledge, and all applicable federal, state and local laws and regulations as now existing and as may be amended or modified. Specifically, but not limited to, Seller shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of the supplement/purchase order and this Master Agreement because of race, creed, color, sex, age, national origin or disability.

## **ARTICLE 28 CONFLICT OF INTEREST**

Seller shall notify Purchaser of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Purchaser's satisfaction, Purchaser reserves the right to terminate the supplement/purchase order and this Master Agreement as to itself only.

## **ARTICLE 29 SOVEREIGN IMMUNITY**

By entering into this Master Agreement with Seller, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

**ARTICLE 30 CONFIDENTIAL INFORMATION**

**30.1** Seller shall treat all Purchaser data and information to which it has access by Seller's performance under a supplement/purchase order and this Master Agreement as confidential and shall not disclose such data or information to a third party without specific written consent. In the event that Seller receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, the Seller shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of the supplement/purchase order or this Master Agreement and shall continue in full force and effect and shall be binding upon the Seller and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in the supplement/purchase order or this Master Agreement on behalf of, or under the rights of the Seller following any termination or completion of the supplement/purchase order or this Master Agreement.

**30.2** The foregoing obligations do not apply to information which: (a) is or becomes known by the Seller without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public through no act or omission of Seller, or (c) is independently developed by Seller without use of confidential or proprietary information.

**30.3** With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Master Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Seller. ITS will provide third party notice to Seller of any requests received by ITS for any such confidential exhibits so as to allow Seller the opportunity to protect the information by court order as outlined in ITS Public Records Procedures. It is further understood by Seller that copies of this executed Master Agreement may be distributed to the governmental agencies, governing authorities, and educational institutions of the State of Mississippi.

**ARTICLE 31 EFFECT OF SIGNATURE**

Each person signing a supplement/purchase order or this Master Agreement represents that he or she has read the supplement/purchase order and this Master Agreement in its entirety, understands its terms, is duly authorized to execute the supplement/purchase order or this Master Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, the supplement/purchase order and this Master Agreement shall not be construed or interpreted in favor of or against the State or Seller on the basis of draftsmanship or preparation hereof.

**ARTICLE 32 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

The Purchaser shall own all files, work papers, documentation, programs, data bases (and all applications thereof), data, and/or other material, electronic or otherwise, collected and created in connection with work performed under a supplement/purchase order, whether completed or in progress, except for: (a) Seller's internal administrative and quality assurance files and internal project correspondence; (b) software, documents, objects or things owned by Seller or a third party and pre-existing the work performed under the supplement/purchase order, and (c) documents, objects or things in which Seller has no right to transfer ownership. As to such documents, objects and things, Seller shall convey such right or interest to the extent allowed by

law. Seller shall deliver such documents and work papers to Purchaser upon termination or completion of the supplement/purchase order. The foregoing notwithstanding, Seller shall be entitled to retain a set of such work papers only after receiving written permission from the Purchaser.

### **ARTICLE 33 FORCE MAJEURE**

Both Seller and the Purchaser shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation, acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods or other natural disasters (the "Force Majeure Events"). Delays in delivery or in meeting completion dates due to Force Majeure Events shall extend such dates as mutually agreed to by the Seller and Purchaser.

### **ARTICLE 34 STATE PROPERTY**

Seller shall be responsible for the proper custody of any Purchaser-owned property furnished for Seller's use in connection with work performed pursuant to any supplement/purchase order. Seller shall reimburse the Purchaser for any loss or damage, normal wear and tear excepted.

### **ARTICLE 35 NEWS RELEASES**

News releases pertaining to a supplement/purchase order or this Master Agreement or the products, study, data, or project to which it relates will not be made without prior written Purchaser approval, and then only in accordance with the explicit written instructions from Purchaser.

### **ARTICLE 36 SURVIVAL**

Articles 9, 10, 16, 20, 24, 29, 30, 32, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of the supplement/purchase order or this Master Agreement.

### **ARTICLE 37 ENTIRE AGREEMENT**

**37.1** This Master Agreement constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the Parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software, or any "click-wrap" or "browse-wrap" license presented in connection with a purchase via the internet. The RFP No. 3736, Seller's Proposal in response to RFP No. 3736, and the supplement/purchase order are hereby incorporated into and made a part of this Master Agreement as far as the individual governmental agency/institution is concerned.

**37.2** The Master Agreement made by and between the Parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A.** The Exception Summary as agreed to by ITS and Seller;
- B.** This Master Agreement signed by Seller and ITS, and all attachments;
- C.** The published EPL;

- D. RFP No. 3736;
- E. Official written correspondence from ITS to Seller;
- F. Official written correspondence from Seller to ITS when clarifying Seller's proposal;
- G. Seller's Proposal, as accepted by ITS, in response to RFP No. 3736, and
- H. The actual supplement/purchase order or additional contract, if required, between Purchaser and Seller.

**37.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by Seller. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. The Exception Summary") and the lowest document is listed last ("H. The actual supplement/purchase order").

#### **ARTICLE 38 SERVICES**

When ordered by Purchaser, Seller agrees to provide consulting, training and technical support services as mutually agreed upon by Seller and Purchaser.

#### **ARTICLE 39 DEBARMENT AND SUSPENSION CERTIFICATION**

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Master Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Master Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

#### **ARTICLE 40 COMPLIANCE WITH ENTERPRISE SECURITY**

Seller and Purchaser understand and agree that all products and services provided by Seller under this Master Agreement must be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Master Agreement and require the Seller to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

**ARTICLE 41 TRANSPARENCY**

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Master Agreement shall be posted to the State of Mississippi’s accountability website at: <https://www.transparency.mississippi.gov>. Prior to ITS posting the Master Agreement to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as “confidential” will be redacted by ITS.

**ARTICLE 42 EPL ADMINISTRATIVE FEES**

Within fifteen (15) calendar days following the completion of each quarter, Seller shall submit its Marketing/Sales Report identifying all Express Products Lists (“EPL”) sales to ITS. Upon receipt of same, ITS will review the Marketing/Sales Report and assess a one percent (1%) administrative fee based on the total amount of sales that are reported. ITS will thereafter invoice Seller for their administrative fees, with said invoice being mailed to the “bill-to” address provided by Seller. Seller understands and agrees that the EPL administrative fee is the responsibility of the Seller and is not to be charged to the Purchaser in the form of a separate line item. Seller agrees to remit its payment of the administrative fee to ITS each quarter within thirty (30) calendar days of the invoice date (hereinafter referred to as “Due Date”). It is understood and agreed by the parties that in the event Seller fails to submit its Marketing/Sales Report within fifteen (15) calendar days following completion of a quarter or in the event Seller fails to remit its payment of the quarterly administrative fees by the Due Date, Seller will be immediately suspended from participation in the EPL until such time as the Marketing/Sales Report is received by ITS and all outstanding administrative fees have been paid in full.

For the faithful performance of the terms of this Master Agreement, the Parties have caused this Master Agreement to be executed by their undersigned representatives.

**State of Mississippi, Department of Information Technology Services, on behalf of the agencies and institutions of the State of Mississippi**

**INSERT VENDOR NAME**

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Printed Name: Craig P. Orgeron, Ph.D.

Printed Name: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX B  
STANDARD CONTRACT  
ARRA Version**

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with **ITS**.

Due to the need for uniformity among EPL Vendors, the terms of the Master Purchase Agreement are non-negotiable.

**ARRA Version**

**PROJECT #40638  
MASTER PURCHASE AGREEMENT  
BETWEEN  
INSERT NAME OF VENDOR  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR THE  
AGENCIES AND INSTITUTIONS OF THE STATE OF MISSISSIPPI**

This Master Purchase Agreement (hereinafter referred to as "Master Agreement") is entered into by and between **INSERT NAME OF VENDOR**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT STREET ADDRESS FOR VENDOR** (hereinafter referred to as "Seller"), and the Mississippi Department of Information Technology Services, having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the governmental agencies and educational institutions of the State of Mississippi (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State". ITS and Seller are sometimes collectively referred to herein as "Parties".

**WHEREAS**, ITS, pursuant to Request for Proposals (hereinafter referred to as "RFP") Number 3736, requested proposals for the selection of vendors to fulfill the requirements of a Microsoft authorized reseller under the terms of all Microsoft licensing programs which the State has entered into with Microsoft, including but not limited to, the Microsoft Select Plus Agreements for government and education, Microsoft Enterprise Agreement, Microsoft Campus Agreement/Enrollment for Education Solutions Agreement and Microsoft School Agreement, as well as other Microsoft licensing such as the Microsoft Open License Program;

**WHEREAS**, Seller was a successful proposer in an open, fair and competitive procurement process to serve as an authorized reseller;

**WHEREAS**, ITS desires to enter into a Master Agreement containing the terms and conditions which will govern any orders placed by the Purchaser during the term of this Master Agreement for Microsoft software ("Products") and services from Seller as specified in RFP No. 3736;

**NOW THEREFORE**, in consideration of the mutual understandings, promises, consideration and agreements set forth, the Parties hereto agree as follows:

**ARTICLE 1 TERM OF AGREEMENT**

Unless terminated as prescribed elsewhere herein, this Master Agreement will become effective on the date it is signed by all Parties (the "Effective Date") and will continue in effect through November 30, 2016, or until all warranties provided by Seller to Purchaser have expired, whichever occurs last. At the end of the initial term, the Master Agreement may, upon the written agreement of the Parties, be renewed for additional terms, the length of which will be agreed upon by the Parties. Sixty (60) days prior to the expiration of the initial or any renewal term of this Master Agreement, Seller shall notify ITS in writing of the impending expiration and thereafter ITS shall notify Seller of its intent to either renew or cancel the Master Agreement.

**ARTICLE 2 MODIFICATION OR RENEGOTIATION**

This Master Agreement may be modified only by written agreement signed by the Parties hereto, and any attempt at oral modification shall be void and of no effect. The Parties agree to renegotiate the Master Agreement and any pertinent supplement /purchase order if federal and/or state revisions of any applicable laws or regulations make changes in this Master Agreement and any pertinent supplement/purchase order necessary.

**ARTICLE 3 INCLUDED PARTIES**

Seller will accept orders from and furnish the Products and services under this Master Agreement to any governmental agency, governing authority, or educational institution within Mississippi, at prices not to exceed those specified in Seller's Proposal in response to RFP No. 3736.

**ARTICLE 4 ADDITIONAL TERMS AND CONDITIONS**

All provisions in this Master Agreement are in addition to the requirements of RFP No. 3736 and Seller's Proposal in response thereto, which are both incorporated into and made a part of this Master Agreement.

**ARTICLE 5 ORDERS**

**5.1** The State does not guarantee that it will purchase any minimum amount under this Master Agreement.

**5.2** The Parties agree that some or all of the Products and/or Services as proposed by Seller may be published as the Microsoft Express Products List ("EPL"). ITS and Seller will mutually agree on the format and content of the EPL.

**5.3** When a Purchaser decides to procure any Products and/or services from Seller, the Purchaser shall execute a supplement/purchase order to be signed by Seller and an authorized representative of the Purchaser. The supplement/purchaser order shall set forth the Products/services to be procured; the prices for same; any warranty period, the specific details of the transaction, and any additional terms and conditions agreed to by the Seller and Purchaser. All supplements/purchase orders shall be governed by, and incorporate by reference, the terms and conditions of this Master Agreement. Excluding better pricing and/or discounts which may be specified in a supplement/purchase order, in the event of a conflict between the other terms and conditions in the supplement/purchase order or the terms of any document provided by Seller or its subcontractors, and this Master Agreement, the terms and conditions of this Master Agreement shall prevail. The Parties agree that the Purchaser has the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by the Purchaser.

**5.4** Seller guarantees its pricing for the term of RFP No. 3736. In the event there is a national price decrease of the Products bid during that time, Seller agrees to extend the new, lower pricing to Purchaser. Seller shall not increase its pricing during the term of this Master Agreement unless Microsoft has issued a price increase for the particular Product. Regardless of any price increase or decrease, the discount structure shall remain the same during the term of this Master Agreement.

## **ARTICLE 6 PRODUCT CHANGES**

**6.1** Seller and ITS may, at any time, mutually agree in writing to amend the list of Products specified in Seller's Proposal in response to RFP No. 3736 so as to add other Products which shall then be available to Purchaser under the terms of this Master Agreement.

**6.2** Seller shall be under no obligation to continue to stock in its inventory any Product, and Seller may delete any Products discontinued by Microsoft from the list of Products specified in Seller's Proposal in response to RFP No. 3736 at any time. Seller shall provide prior written notice to ITS that the Products are being discontinued by Microsoft.

## **ARTICLE 7 METHOD OF PAYMENT**

**7.1** Once the Products have been accepted by Purchaser as prescribed in Article 8 herein, or there has been lack of notice to the contrary, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Seller shall submit invoices and supporting documentation electronically during the term of this Master Agreement using the processes and procedures identified by the State. Services will be invoiced as they are rendered. Purchaser agrees to pay Seller in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. All payments shall be in United States currency. Payments by state agencies that make payments through the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller's choice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in Article 37 herein.

**7.2** If payment of undisputed amounts is not made to Seller within forty-five (45) days of Purchaser's receipt of the invoice, Purchaser shall be liable to Seller for interest at a rate of one and one-half percent (1 ½%) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

**7.3** Acceptance by Seller of the last payment from the Purchaser under a supplement/purchase order shall operate as a release of all claims against the State by Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under a supplement/purchase order.

## **ARTICLE 8 DELIVERY; RISK OF LOSS; INSTALLATION, AND ACCEPTANCE**

**8.1** Seller shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule mutually agreed to by the Seller and Purchaser.

**8.2** All Products shall be delivered to the Purchaser suitably packed for ground shipment in Seller standard shipping cartons, marked for shipment to one of Purchaser's ship-to locations identified in each supplement/purchase order, and delivered to Purchaser F.O.B. Destination.

**8.3** Seller shall assume and shall bear the entire risk of loss and damage to the Products

from any cause whatsoever while in transit and at all times throughout its possession thereof.

**8.4** If installation by Seller is required, Seller acknowledges that installation of the Products shall be accomplished with minimal interruption of Purchaser's normal day to day operations, and that the installation will be pursuant to the requirements of the Purchaser.

**8.5** Seller warrants that all Products shall be properly delivered, installed and integrated, if necessary, for acceptance testing within the scheduling deadlines agreed to by the Seller and Purchaser as the site is deemed ready for installation. If installation by Seller is required, Seller shall provide Purchaser with an installation schedule identifying the date, time and location within the scheduling deadlines agreed to by the Seller and Purchaser.

**8.6** Unless a different acceptance period is agreed upon in writing by Seller and the Purchaser, Purchaser shall accept the Products provided by Seller after a thirty (30) calendar day testing period utilizing testing criteria developed by Purchaser. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that they perform without any defects and perform pursuant to Microsoft's Product specifications. Purchaser shall notify Seller in writing of its acceptance of the Products.

**8.7** In the event the Product fails to perform as stated in Article 8.6 herein, Purchaser shall notify Seller. Unless a different period of time is agreed to by Seller and the Purchaser, Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Seller neither corrects the defects nor replaces the defective Product, Purchaser reserves the right to return the Product to Seller at Seller's expense and to cancel the supplement/purchase order.

## **ARTICLE 9 WARRANTIES**

**9.1** Seller represents and warrants that it has the right to license the software Products provided under this Master Agreement.

**9.2** Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from Microsoft.

**9.3** Unless a longer warranty period is specified in the supplement/purchase order, Seller represents and warrants, for a period of ninety (90) days from performance of the service, that all work hereunder, including but not limited to, consulting, training and technical support, has been performed in a good and workmanlike manner and consistent with generally accepted industry standards. For any breach of this warranty, Seller shall perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

**9.4** Unless a different warranty is stated in the supplement/purchase order, Seller represents and warrants that the Products will operate free from defects for a period of ninety (90) days after acceptance, and will provide Purchaser complete functionality necessary for the operation of the system. Seller's obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the Product at the expense of Seller. In the event Seller is unable to repair or replace the Product within ten (10) working days after receipt of notice of the defect, Purchaser shall be entitled to a full refund of fees paid and shall have the right to terminate the supplement/purchase order and this Master Agreement in whole or in part

solely as between Seller and Purchaser. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

**9.5** Seller represents and warrants that there is no disabling code, lockup program or device embedded in the Products provided to Purchaser. Seller further agrees that it will not, under any circumstances, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's licensed use of the Products and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transactions of Purchaser's business. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

**9.6** Seller represents and warrants that there is no computer virus contained in the Products when delivered to Purchaser. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Products that will damage or destroy Purchaser's applications or data. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of any virus, and shall be responsible for repairing, at Seller's expense, any and all damage done by the virus to Purchaser's site.

**9.7** Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Seller agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Seller understands and agrees that any breach of these warranties may subject Seller to the following: (a) termination of this Master Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

**9.8** Seller understands and agrees that some, all or none of the purchases made under this Master Agreement may be funded by the American Recovery and Reinvestment Act of 2009 (hereinafter referred to as "ARRA") and, as such, represents and warrants that for any ARRA purchases, it will comply with the requirements of ARRA as set forth in Exhibit A, which is attached hereto and incorporated herein by reference and will maintain adequate records to verify its full compliance with those requirements.

**9.9** Seller represents and warrants that it will comply with the state's data breach notification laws codified at Section 75-24-29 of the Mississippi Code Annotated (Supp. 2012). Further, to the extent applicable, Seller represents and warrants that it will comply with the applicable provisions of the HIPAA Privacy Rule and Security Regulations (45 CFR Parts 160, 162 and 164) ("Privacy Rule" and "Security Regulations", individually; or "Privacy and Security Regulations", collectively); and the provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the "HITECH Act").

#### **ARTICLE 10 INFRINGEMENT INDEMNIFICATION**

**10.1** Seller represents and warrants that neither the Products, their elements nor the use thereof violates or infringes on any copyright, patent, trade secret or other proprietary right of any person or entity. Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the Products provided under this Master Agreement and shall pay all costs, attorney fees, settlements, damages and judgment finally awarded against Purchaser, provided that: (i) Purchaser promptly notifies Seller in writing of any such claim of which it has knowledge; (ii) Seller has, to the extent authorized by Mississippi law, sole control of the defense of any actions and negotiations related to the defense or settlement of any claim, and (iii) Purchaser cooperates in the defense of the claim by supplying Seller all relevant information currently available and in its possession, all at Seller's expense.

**10.2** If Seller believes that the Product is or will become the subject of an infringement claim, or in the event that use of the Product is enjoined, Seller, at its own expense, shall: (a) first procure for Purchaser the right to continue using the Product, or upon failing to procure such right; (b) modify or replace the Product to make it non-infringing while maintaining substantially similar software functionality or data/informational content, or upon failing to secure either such right, (c) request Purchaser to return the infringing items to Seller and Seller shall refund the software license fees previously paid by Purchaser for the Products the Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

**10.3** Seller shall have no indemnification obligations to Purchaser under this Article for any infringement resulting directly from: (i) the combination or use of the Product with other items not provided by Seller; (ii) material modification of the Product by someone other than Seller, its agents or subcontractors or Purchaser's employees who were working at Seller's direction, where such modification creates the infringement; (iii) use of an allegedly infringing version of the Product if the alleged infringement would have been avoided by the use of a different version Seller made available to Purchaser at no cost to Purchaser, as long as the new or corrected version did not adversely affect the Purchaser's system's functionality.

#### **ARTICLE 11 EMPLOYMENT STATUS**

**11.1** Seller shall, during the entire term of this Master Agreement, be construed to be an independent contractor. Nothing in this Master Agreement is intended to nor shall it be construed to create an employer-employee relationship or a joint venture relationship.

**11.2** Seller represents that it is qualified to perform the duties to be performed under this Master Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Master Agreement. Such personnel shall not be deemed in any way directly or indirectly, expressly or by

implication, to be employees of Purchaser. Seller shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to state retirement or leave benefits.

**11.3** Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees under this Master Agreement. If Seller is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Seller will not charge Purchaser for those hours.

**ARTICLE 12 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff and/or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations to install or repair Products shall be covered by Seller's comprehensive general liability insurance policy.

**ARTICLE 13 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**13.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the Parties agree that Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for any given Purchaser project. The Purchaser is only required to negotiate with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors.

**13.2** Neither party to a supplement/purchase order and this Master Agreement may assign or otherwise transfer the supplement/purchase order and/or this Master Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. The supplement/purchase order and this Master Agreement shall be binding upon the Parties' respective successors and assigns.

**13.3** Seller must obtain the written approval of Purchaser before subcontracting any portion of the supplement/purchase order and this Master Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in the supplement/purchase order. All subcontracts shall incorporate the terms of the supplement/purchase order and this Master Agreement and shall be subject to the terms and conditions of same and to any conditions of approval that Purchaser may deem necessary.

**13.4** Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with Seller. Seller shall indemnify and hold harmless the

State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Seller's failure to pay any and all amounts due by Seller to any subcontractor, materialman, laborer or the like.

**13.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between Seller and the Purchaser, where such dispute affects the subcontract.

#### **ARTICLE 14 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Purchaser to proceed under this Master Agreement and the supplement/purchase order is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Master Agreement. If the funds anticipated for the fulfillment of this Master Agreement and the supplement/purchase order are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Master Agreement, Purchaser shall have the right to immediately terminate the supplement/purchase order and this Master Agreement as to itself only, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under the supplement/purchase order and this Master Agreement. Any payment due Seller for services rendered by Seller prior to termination and received by Purchaser shall be paid.

#### **ARTICLE 15 TERMINATION**

**15.1** Termination Upon Mutual Agreement: The supplement/purchase order may be terminated in whole or in part upon the mutual written agreement of Seller and the Purchaser.

**15.2** Termination Due To Bankruptcy: Should Seller become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Purchaser may terminate a supplement/purchase order and this Master Agreement solely as between those two entities and without the assessment of penalties.

**15.3** Termination Other Than For Cause: A Purchaser may terminate the supplement/purchase order and this Master Agreement as to itself only, in whole or in part and without the assessment of penalties, for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller.

**15.4** Termination For Cause: Either Purchaser or Seller may terminate a supplement/purchase order and this Master Agreement solely as between those two entities upon a material breach by the other party upon thirty (30) calendar days prior written notice unless the defaulting party cures such breach within such thirty (30) calendar-day period, or such other cure timeframe as may be mutually agreed upon by the Seller and Purchaser. Provided that, if the Purchaser terminates a supplement/purchase order and this Master Agreement solely as between those two entities because of Seller's inability to cure material defects after notice and opportunity to cure, the Purchaser may terminate the supplement/purchase order and this Master Agreement solely as between those two entities

without also providing the notice and opportunity to cure required in this Article. The non-defaulting party may also pursue any remedy available to it in law or in equity.

**15.5 Termination of Master Agreement:** ITS may terminate the Master Agreement without the assessment of penalties for any reason after giving thirty (30) calendar days written notice specifying the effective date thereof to Seller, but any supplement/purchase order entered into prior to the termination date of the Master Agreement shall survive the termination of the Master Agreement. The terms of this Master Agreement shall survive its termination/expiration with respect to any un-expired supplements/purchase orders.

**15.6** Upon termination of a supplement/purchase order, Seller shall refund any and all applicable unexpended pro-rated support/service fees previously paid by the Purchaser. Further, in the event a supplement/purchase order is terminated, Seller shall receive just and equitable compensation for satisfactory work completed by Seller and accepted by Purchaser prior to the termination. Such compensation shall be based upon and shall not exceed the amounts set forth in the particular supplement/purchase order.

#### **ARTICLE 16 GOVERNING LAW**

This Master Agreement and each supplement/purchase order shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Seller expressly agrees that under no circumstances shall Purchaser or ITS be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Seller. Further, nothing in this Master Agreement shall affect any statutory rights Purchaser may have that cannot be waived or limited by contract.

#### **ARTICLE 17 WAIVER**

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Master Agreement. A waiver by the State, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

#### **ARTICLE 18 SEVERABILITY**

If any term or provision of a supplement/purchase order or this Master Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the supplement/purchase order or this Master Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that the Purchaser's purpose for entering into the supplement/purchase order can be fully achieved by the remaining portions of the supplement/purchase order that have not been severed.

#### **ARTICLE 19 CAPTIONS**

The captions or headings in this Master Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Master Agreement.

#### **ARTICLE 20 HOLD HARMLESS**

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits,

actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Seller and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform the supplement/purchase order and this Master Agreement.

#### **ARTICLE 21 THIRD PARTY ACTION NOTIFICATION**

Seller shall notify Purchaser and ITS in writing within five (5) business days of Seller filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to the supplement/purchase order or this Master Agreement and/or which may affect the Seller's performance under the supplement/purchase order and this Master Agreement. Failure of the Seller to provide such written notice to Purchaser and ITS shall be considered a material breach of this Master Agreement and the Purchaser and ITS may, at their sole discretion, pursue their rights as set forth in the Termination Article herein and any other rights and remedies they may have at law or in equity.

#### **ARTICLE 22 AUTHORITY TO CONTRACT**

Seller warrants that it is a validly organized business with valid authority to enter into this Master Agreement; that entry into and performance under this Master Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Master Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under a supplement/purchase order and this Master Agreement.

#### **ARTICLE 23 NOTICE**

Any notice required or permitted to be given under this Master Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their usual business address. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Seller's address for notice is: **INSERT NAME, TITLE, AND ADDRESS OF VENDOR PERSON FOR NOTICE**. Notice shall be deemed given when actually received or when refused. The Parties agree to promptly notify each other in writing of any change of address.

#### **ARTICLE 24 RECORD RETENTION AND ACCESS TO RECORDS**

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Master Agreement and the supplement/purchase order. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall, at their expense and upon prior reasonable notice to Seller, have access to any of the Seller's books, documents, papers and/or records that are pertinent to this Master Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Seller's office as applicable where such records are kept during normal business hours. All records relating to this Master Agreement and the supplement/purchase order shall be retained by the Seller for three (3) years from the date of receipt of final payment under this Master

Agreement and the supplement/purchase order. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

## **ARTICLE 25 INSURANCE**

Seller represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Seller's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Seller will, upon request, furnish Purchaser with a certificate of conformity providing the aforesaid coverage.

## **ARTICLE 26 DISPUTES**

**26.1** Should disputes arise with respect to the supplement/purchase order and/or this Master Agreement, Seller and Purchaser agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Seller agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under the supplement/purchase order and/or this Master Agreement. Should Seller fail to continue without delay to perform its responsibilities under the supplement/purchase order and/or this Master Agreement in the accomplishment of all work, any additional costs incurred by Seller or Purchaser as a result of such failure to proceed shall be borne by Seller and Seller shall make no claim against Purchaser for such costs.

**26.2** If Seller and Purchaser cannot resolve a dispute within ten (10) calendar days following written notification by either party of the existence of said dispute, then the following procedure shall apply:

- A.** Seller and Purchaser agree to resolve such matters through submission of their dispute to the Executive Director of ITS, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Seller and Purchaser within ten (10) calendar days after presentation of such dispute for his/her decision.
- B.** Purchaser may withhold payments on disputed items pending resolution of the dispute. The withholding of such payments shall not constitute cause for termination or suspension of the supplement/purchase order and/or this Master Agreement by Seller.
- C.** Disagreement with the Executive Director's decision by either party shall not constitute a breach under the terms of this Master Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

## **ARTICLE 27 COMPLIANCE WITH LAWS**

Seller shall comply with, and all activities under a supplement/purchase order and this Master Agreement shall be subject to, all Purchaser policies and procedures of which Seller has knowledge, and all applicable federal, state and local laws and regulations as now existing and as may be amended or modified. Specifically, but not limited to, Seller shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of the supplement/purchase order and this Master Agreement because of race, creed, color, sex, age, national origin or disability.

## **ARTICLE 28 CONFLICT OF INTEREST**

Seller shall notify Purchaser of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Purchaser's satisfaction,

Purchaser reserves the right to terminate the supplement/purchase order and this Master Agreement as to itself only.

#### **ARTICLE 29 SOVEREIGN IMMUNITY**

By entering into this Master Agreement with Seller, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

#### **ARTICLE 30 CONFIDENTIAL INFORMATION**

**30.1** Seller shall treat all Purchaser data and information to which it has access by Seller's performance under a supplement/purchase order and this Master Agreement as confidential and shall not disclose such data or information to a third party without specific written consent. In the event that Seller receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, the Seller shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of the supplement/purchase order or this Master Agreement and shall continue in full force and effect and shall be binding upon the Seller and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in the supplement/purchase order or this Master Agreement on behalf of, or under the rights of the Seller following any termination or completion of the supplement/purchase order or this Master Agreement.

**30.2** The foregoing obligations do not apply to information which: (a) is or becomes known by the Seller without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public through no act or omission of Seller, or (c) is independently developed by Seller without use of confidential or proprietary information.

**30.3** With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Master Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Seller. ITS will provide third party notice to Seller of any requests received by ITS for any such confidential exhibits so as to allow Seller the opportunity to protect the information by court order as outlined in ITS Public Records Procedures. It is further understood by Seller that copies of this executed Master Agreement may be distributed to the governmental agencies, governing authorities, and educational institutions of the State of Mississippi.

#### **ARTICLE 31 EFFECT OF SIGNATURE**

Each person signing a supplement/purchase order or this Master Agreement represents that he or she has read the supplement/purchase order and this Master Agreement in its entirety, understands its terms, is duly authorized to execute the supplement/purchase order or this Master Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, the supplement/purchase order and this Master Agreement shall not be construed or interpreted in favor of or against the State or Seller on the basis of draftsmanship or preparation hereof.

#### **ARTICLE 32 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

The Purchaser shall own all files, work papers, documentation, programs, data bases (and all

applications thereof), data, and/or other material, electronic or otherwise, collected and created in connection with work performed under a supplement/purchase order, whether completed or in progress, except for: (a) Seller's internal administrative and quality assurance files and internal project correspondence; (b) software, documents, objects or things owned by Seller or a third party and pre-existing the work performed under the supplement/purchase order, and (c) documents, objects or things in which Seller has no right to transfer ownership. As to such documents, objects and things, Seller shall convey such right or interest to the extent allowed by law. Seller shall deliver such documents and work papers to Purchaser upon termination or completion of the supplement/purchase order. The foregoing notwithstanding, Seller shall be entitled to retain a set of such work papers only after receiving written permission from the Purchaser.

### **ARTICLE 33 FORCE MAJEURE**

Both Seller and the Purchaser shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation, acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods or other natural disasters (the "Force Majeure Events"). Delays in delivery or in meeting completion dates due to Force Majeure Events shall extend such dates as mutually agreed to by the Seller and Purchaser.

### **ARTICLE 34 STATE PROPERTY**

Seller shall be responsible for the proper custody of any Purchaser-owned property furnished for Seller's use in connection with work performed pursuant to any supplement/purchase order. Seller shall reimburse the Purchaser for any loss or damage, normal wear and tear excepted.

### **ARTICLE 35 NEWS RELEASES**

News releases pertaining to a supplement/purchase order or this Master Agreement or the products, study, data, or project to which it relates will not be made without prior written Purchaser approval, and then only in accordance with the explicit written instructions from Purchaser.

### **ARTICLE 36 SURVIVAL**

Articles 9, 10, 16, 20, 24, 29, 30, 32, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of the supplement/purchase order or this Master Agreement.

### **ARTICLE 37 ENTIRE AGREEMENT**

**37.1** This Master Agreement constitutes the entire agreement of the Parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the Parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software, or any "click-wrap" or "browse-wrap" license presented in connection with a purchase via the internet. The RFP No. 3736, Seller's Proposal in response to RFP No. 3736, and the supplement/purchase order are hereby incorporated into and made a part of this Master Agreement as far as the individual governmental agency/institution is concerned.

**37.2** The Master Agreement made by and between the Parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A. The Exception Summary as agreed to by ITS and Seller;
- B. This Master Agreement signed by Seller and ITS, and all attachments;
- C. The published EPL;
- D. RFP No. 3736;
- E. Official written correspondence from ITS to Seller;
- F. Official written correspondence from Seller to ITS when clarifying Seller's proposal;
- G. Seller's Proposal, as accepted by ITS, in response to RFP No. 3736, and
- H. The actual supplement/purchase order or additional contract, if required, between Purchaser and Seller.

**37.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by Seller. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. The Exception Summary") and the lowest document is listed last ("H. The actual supplement/purchase order").

#### **ARTICLE 38 SERVICES**

When ordered by Purchaser, Seller agrees to provide consulting, training and technical support services as mutually agreed upon by Seller and Purchaser.

#### **ARTICLE 39 DEBARMENT AND SUSPENSION CERTIFICATION**

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Master Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Master Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

#### **ARTICLE 40 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

Seller and Purchaser understand and agree that all products and services provided by Seller under this Master Agreement must be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise

Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Master Agreement and require the Seller to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

**ARTICLE 41 TRANSPARENCY**

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Master Agreement shall be posted to the State of Mississippi’s accountability website at: <https://www.transparency.mississippi.gov>. Prior to ITS posting the Master Agreement to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as “confidential” will be redacted by ITS.

**ARTICLE 42 EPL ADMINISTRATIVE FEES**

Within fifteen (15) calendar days following the completion of each quarter, Seller shall submit its Marketing/Sales Report identifying all Express Products Lists (“EPL”) sales to ITS. Upon receipt of same, ITS will review the Marketing/Sales Report and assess a one percent (1%) administrative fee based on the total amount of sales that are reported. ITS will thereafter invoice Seller for their administrative fees, with said invoice being mailed to the “bill-to” address provided by Seller. Seller understands and agrees that the EPL administrative fee is the responsibility of the Seller and is not to be charged to the Purchaser in the form of a separate line item. Seller agrees to remit its payment of the administrative fee to ITS each quarter within thirty (30) calendar days of the invoice date (hereinafter referred to as “Due Date”). It is understood and agreed by the parties that in the event Seller fails to submit its Marketing/Sales Report within fifteen (15) calendar days following completion of a quarter or in the event Seller fails to remit its payment of the quarterly administrative fees by the Due Date, Seller will be immediately suspended from participation in the EPL until such time as the Marketing/Sales Report is received by ITS and all outstanding administrative fees have been paid in full.

For the faithful performance of the terms of this Master Agreement, the Parties have caused this Master Agreement to be executed by their undersigned representatives.

**State of Mississippi, Department of Information Technology Services, on behalf of the agencies and institutions of the State of Mississippi**

**INSERT VENDOR NAME**

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Printed Name: Craig P. Orgeron, Ph.D.

Printed Name: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### Reporting and Registration Requirements Under Section 1512 of the American Recovery and Reinvestment Act of 2009.

The recipient\* agrees to the following reporting and registration requirements of Section 1512 of the American Recovery and Reinvestment Act and in accordance with 2 CFR § 176.50, if applicable:

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

(e) The contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to title XV, Section 1512 of the ARRA, the State shall require that the contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the contractor's own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

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\*As used here and hereafter, recipient means "any entity other than an individual that receives Recovery Act funds in the form of a grant, cooperative agreement or loan directly from the Federal Government." 2 CFR § 176.30.

**Required Use of American Iron, Steel, and Manufactured Goods Not Covered Under International Agreements Under Section 1605 of the American Recovery and Reinvestment Act of 2009.**

The recipient agrees to the following required use of American Iron, Steel, and Manufactured Goods of Section 1605 of the American Recovery and Reinvestment Act and in accordance with 2 CFR §176.140 when awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements, if applicable: L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

- (i) Processed into a specific form and shape; or
- (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multiState, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub.

produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

*[Award official to list applicable excepted materials or indicate "none"]*

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United

States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

- (B) Unit of measure;
  - (C) Quantity;
  - (D) Cost;
  - (E) Time of delivery or availability;
  - (F) Location of the project;
  - (G) Name and address of the proposed supplier; and
  - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
- (iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign

iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data*. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good .....	_____	_____	_____
Domestic steel, iron, or manufactured good .....	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good .....	_____	_____	_____
Domestic steel, iron, or manufactured good .....	_____	_____	_____
[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]			
[Include other applicable supporting information.]			
[*Include all delivery costs to the construction site.]			

**Required Use of American Iron, Steel, and Manufactured Goods  
Covered Under International Agreements Under Section 1605 of the  
American Recovery and Reinvestment Act of 2009.**

*The recipient agrees to the following required use of American Iron, Steel, and Manufactured Goods (covered under International Agreements) of Section 1605 of the of the Recovery and Reinvestment Act and in accordance with 2 CFR §176.160 when awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that involves iron, steel, and/or manufactured goods materials covered under international agreements, if applicable:*

a) *Definitions.* As used in this award term and condition—

*Designated country—*

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);
- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

*Designated country iron, steel, and/or manufactured goods—*

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

*Domestic iron, steel, and/or manufactured good—*

- (1) Is wholly the growth, product, or manufacture of the United States; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

*Foreign iron, steel, and/or manufactured good* means iron, steel, and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

*Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

*Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multiState, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals,

and the construction, alteration, maintenance, or repair of such buildings and works.

*Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.*

(1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

*[Award official to list applicable excepted materials or indicate “none”]*

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such

material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will

amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or

manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good .....	_____	_____	_____
Domestic steel, iron, or manufactured good .....	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good .....	_____	_____	_____
Domestic steel, iron, or manufactured good .....	_____	_____	_____
[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]			
[Include other applicable supporting information.]			
[*Include all delivery costs to the construction site.]			

### **Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act.**

*The recipient agrees to the following wage rate requirements of Section 1606 of the Recovery and Reinvestment Act and in accordance with 2 CFR §176.190 when issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair, if applicable:*

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use the award term described in the following paragraphs:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the DavisBacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard DavisBacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard DavisBacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of DavisBacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

**Recipient Responsibilities regarding tracking and documenting Expenditures under the American Recovery and Reinvestment Act of 2009.**

*The recipient agrees to the following tracking and documenting responsibilities required by Section 1606 of the Recovery and Reinvestment Act and in accordance with 2 CFR §176210, if applicable:*

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111– 5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, “Audits of States, Local Governments, and NonProfit Organizations,” recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix “ARRA” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

**Requirement to Comply with Provision of Section 902 of the American Recovery and Reinvestment Act of 2009**

Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

(1) Examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and (2) Interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

**Required Whistleblower Protection Under Section 1553 of the American Recovery and Reinvestment Act of 2009.**

Section 1153 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5, provides protections for certain individuals who make specified disclosures relating to recovery Act funds. Any non-federal employer receiving recovery funds is required to post a notice of the rights and remedies provided under this section of the Act.

**Required Provision Noting Authority of Inspector General in of Section 1515(a) of the American Recovery and Reinvestment Act of 2009**

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

**Required Provision to Comply with NEPA and NHPA**  
*Construction, Renovation, and Remodeling Projects Only*

ARRA funded projects may be required to comply with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and related statutes, including requirements for plans and projects to be reviewed and documented in accordance with those processes. If the ARRA program from which funds are to be expended requires such language, then NEPA and NHPA requirements may need to be included in contracts or sub-grants. Such language would be dependent on federal oversight agency guidance as well as from the following: [http://nepa.gov/nepa/regs/CEQ\\_1609\\_NEPA\\_Guidance\\_03-12.pdf](http://nepa.gov/nepa/regs/CEQ_1609_NEPA_Guidance_03-12.pdf) (NEPA only)

**Requirement to Acknowledge Availability and Use of Funds**

Contractors understand and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

**Requirement Regarding Federal, State and Local Tax Obligations**

By submission of a proposal, contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

**Requirement to Comply with Anti-Discrimination and Equal Opportunity Statutes**

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, ARRA Recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

**Requirement to Comply With All Other ARRA Requirements**

The contractor will comply with any other requirements of ARRA, upon notification by this entity.

**Requirement to Comply with E-Verification Provision of Section 71-11-3 of the  
Mississippi Code of 1972, as amended**

The respondent represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (§71-11-3 of the Mississippi Code of 1972, as amended) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject contractor to the following:

- (a) termination of this Agreement and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- (b) the loss of any license, permit, certification, or other document granted to contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year or both.
- (c) In the event of such termination/cancellation, contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.